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STANDING COMMITTEE ON THE OMBUDSMAN
ORGANIZATION

THURSDAY, JULY 11, 1985



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Pierce, F. J. (Rainy River PC)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Pierce

Clerk: Decker, T.

From the Office of the Ombudsman:

Meslin, E. Executive Director

Hill, Dr. D. G., Ombudsman

Then, M. N., Director, Communications and Public Education

STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, July 11, 1985

The committee met at 8:05 p.m. in room 151.

ELECTION OF CHAIRMAN

Clerk of the Committee: It is my duty to call upon the honourable members to elect a chairman. May I have a nomination, please?

Mr. Shymko: I move that Mr. Ron McNeil be elected chairman of this august body, currently called the standing committee on the Ombudsman.

Clerk of the Committee: Mr. Shymko has nominated Mr. McNeil. Are there any other nominations? If not, I will declare nominations closed and Mr. McNeil duly elected chairman of the standing committee on the Ombudsman.

Mr. Shymko: Mr. McNeil, you were lucky I was here.

Mr. Chairman: Thank you very much, gentlemen. I notice I am following in the footsteps of some very excellent members. I hope I can carry out my duties in a manner that will be a credit to the committee, as well as to the Legislature.

ELECTION OF VICE-CHAIRMAN

Mr. Chairman: The next order of business we have is the very important election of a vice-chairman.

Mr. Shymko: I nominate the member for Northumberland (Mr. Sheppard).

Mr. Chairman: Are there any further nominations? I declare Mr. Sheppard elected as vice-chairman.

Mr. Shymko: I believe Mr. Sheppard has just arrived.

Mr. Chairman: You have just been declared vice-chairman. Will you accept the responsibilities of vice-chairman?

Mr. Sheppard: I guess so.

Mr. Shymko: You guess so?

Mr. Chairman: Mr. Morin moves that, unless otherwise ordered, a transcript of all committee hearings be made.

Motion agreed to.

STAFF

Mr. Chairman: The next order of business is discussion of committee staffing. This is my first time as a member of this committee. As I undersand it, as a rule you have a counsel and a member of the staff of the legislative library. I will entertain any motion or suggestions from the committee at the present time.

Mr. Shymko: In the light of the voluminous responsibilities of this committee and the degree of efficiency that depends, not only on the members of the committee but also on the advice of the counsel of this committee, and in the light of the fact that there have been substantial changes in the composition of the committee, I suggest we retain the services of Mr. John Bell, who has acted as counsel for this committee since 1981, as I recall, and probably before with anearlier parliament.

I know there have been discussions that eventually we may look at the possibility of engaging someone with legal expertise or legal background who may be a civil servant. These things may have been discussed; I do not know. I know that in the present circumstances and with the urgency of the task before us, I cannot think of anyone better than Mr. John Bell to guide this committee in its deliberations. To seek a new counsel would jeopardize the work of this committee in terms of a new individual familiarizing himself with the mandate of our committee and the Office of the Ombudsman that we scrutinize.

The other staff person I recall was, I believe, Ms. Merike Madisso who acted as both researcher and assistant to Mr. John Bell. Ms. Madisso is employed by the legislative research office. She also is a lawyer by profession. Perhaps with time she would eventually be one of the candidates to become legal counsel to this committee. Because of her involvement with this committee over the past two years, it would make sense to me and I hope to the rest of the members of the committee to engage her services as well.

Mr. Morin: I think the suggestion by Mr. Shymko is excellent. Mr. Bell has been involved with the committee for many years and I think it would ensure continuity. I would be very pleased to second that motion.

Mr. Chairman: Is there any further discussion?

Mr. Shymko: I had no idea I was making a motion. I thought we were just discussing it.

Mr. Chairman: It does require a motion and we have taken your statement as a motion.

Mr. Shymko: If you perceive it as being a motion, let it be a motion.

Mr. Chairman: Is there any further discussion?

Motion agreed to.

BUDGET

Mr. Chairman: The next order of business is the adoption of the committee budget. I think you have the budget before you.

Mr. Sheppard: It says travel costs. Have you thought about where we are going to travel?

Mr. Chairman: I think we may be travelling to Toronto.

Mr. Newman: North York.

Mr. Chairman: This is entirely up to the committee.

Mr. Sheppard: What was the last budget, do you know, Mr. Chairman?

Mr. Chairman: I will ask the clerk. I have no idea what it was because I have never sat on this committee before, Howard.

Mr. Sheppard: I have never sat on this committee before either.

Mr. Chairman: Yuri has. Probably he could answer.

Mr. Shymko: I did not sit on the committee at its last sitting, which I believe was in January and February of this year, but I was a substitute at that time. I believe the budget reflects the responsibilities of what was a select committee which met only between sessions and never during the sittings of the House. The only times we had the opportunity to sit were during the summer recess and normally at the beginning of September and sometimes going into October. Also during the winter recess, there were normally two sittings in January and February.

Unless there were specific plans for travelling, Mr. Sheppard, normally the six days were a reasonable amount of travel required. There were times when the committee decided to have excessive travel. I will not mention suggestions to go to Fiji for a conference, but we did travel to northern Ontario to see the excellent work of the then Ombudsman. We did request extra funding for these special purposes.

If there are no plans to do any travelling, and I do not predict any suggestions for such travels, I see the budget as reflecting the work of the committee.

I see the mention of 15 meetings in three weeks as services. That is a question I have concerning the budget, namely, that we probably will be meeting for more than three weeks if you look at the 1985-86 estimates allocation. I can see meeting for at least three weeks now during the summer recess and an additional three weeks in the winter. Am I wrong? Someone is shaking his head. Do the services mean the meetings of the committee? Could I have clarification? Are the three weeks mentioned committee meetings?

Mr. Chairman: I understand the counsel will be prepared with the committee report about the middle of September, so that means, Yuri, we will be meeting in September. The House will be back in session in October and we may have the opportunity of meeting during the Christmas recess.

Mr. Sheppard: There is one other thing Yuri will have to tell me. Did the Ombudsman committee sit three days a week or four days a week?

Mr. Shymko: Normally, depending on the work of the committee, there was a period of two years when there was such a backlog of work and some very important issues to be dealt with that we sat four times per week. I do recall some sittings when it was only three times per week. Normally, we should look at a four-day sitting.

Mr. Chairman: It depends on the work load as well as what the committee wants to do. We will be guided by the decision of the committee.

8:20 p.m.

Mr. Shymko: I predict a three- to four-week sitting of four days per week, maximum four weeks, minimum three. Since the committee has not sat for a while, we should look at the possibility of giving ourselves a minimum of four weeks' sitting, four days per week, especially in order to familiarize the new members of the committee with--

Mr. Morin: You are the dean of this committee, I guess.

Mr. Shymko: I am.

Mr. Morin: We will have to rely on your judgement.

Mr. Hayes: I am newly elected, to begin with, and being on this committee is all new to me. I am glad to be part of the committee, but I would like, if I am not out of order, to be briefed as to what our role is on the Ombudsman's committee. I really do not have too much of an idea, to be honest with you.

Mr. Sheppard: I understand the comment. I sat on several committees and they usually sat three days a week. They usually had Monday for travelling and Friday for travelling. Maybe the new members could talk to some of their own members who sat on the committee. There are reasons for sitting three days a week, and I know, Yuri, there is a reason for sitting four days a week. If anybody has to catch a plane, or if members have events going on in their ridings or something, they would like that Monday for travelling and Friday for travelling .

Of course, it is up to the committee, as the chairman says, but I found--and I am not that far away--that Monday for travelling and Friday for travelling worked out.

Mr. Shymko: Where do you travel from? The Yukon?

Mr. Sheppard: Because you are a Torontonionian, you do not
ve very far to travel.

Mr. Chairman: I think our responsibility here is to
scuss the annual report of the Ombudsman, and no doubt you have
ceived this in your office. I believe those are our terms of
ference for this fall.

Mr. Bossy: I do not know if any of the other members
nd themselves in the same predicament I have and that is,
cause of the number of committees conflicting--

Mr. Chairman: We do not have that problem in our caucus.

Mr. Bossy: You do not have that? That seems strange; the
mber of members is not really that much different. When you are
three committees, this can be conflicting. I feel I am going to
ve to remove myself from one or another.

Mr. Chairman: You can always arrange for a substitute.

Mr. Bossy: I am going to have to do that because I find
self in that position. Today this is the third meeting I have
tended of committees I am on. In view of the discussions on
lding meetings, and already knowing from the first one that we
re tied down from August 19 all the way through to practically
e end of September, it does not leave much room for working on
ther committees.

Mr. Chairman: I can understand that.

Mr. Henderson: I think that is worth considering because
am also on three committees.

Mr. Hayes: I am on two committees.

Mr. Henderson: It is going to be very hard for us to get
ubs because all of us who are not in the cabinet, by virtue of
ne small caucus, are going to be on two or three committees and
t is going to be very hard to find subs. It might be well to keep
hat in mind when we are discussing the matter of the schedule.

Mr. Sheppard: How many committees are you on, Bernie?

Mr. Newman: One.

Mr. Shymko: Concerning the comments made by Mr.
heppard, normally one would travel on Monday and committees would
tart their meetings on Monday at two o'clock to allow for members
ho are outside of the metropolitan area to--

Mr. Chairman: Would it be possible to decide on the
hree weeks that we are going to be meeting?

Clerk of the Committee: If I could just clarify the
hree weeks that are in the budget with reference to Mr. Shymko's
uestion about when we would meet, there has been an indication

from the counsel that the earliest he could be ready with his background materials on the latest report would be some time around the end of September. In view of the fact that the committee has not been formed and he has not had a mandate to work on it, he has not begun his work.

Mr. Newman: Has the Ombudsman given you that information?

Clerk of the Committee: No, the counsel has.

Mr. Shymko: Where is that information coming from?

Clerk of the Committee: The counsel, Mr. Bell.

Mr. Chairman: I think we have to have it before that because I think the House will be back in session in October. If we are going to meet during the recess, we have to meet in September.

Mr. Newman: What counsel are you referring to?

Clerk of the Committee: Mr. John Bell.

Mr. Shymko: I understand the importance of--I am sorry, Mr. Chairman, that I am sort of jumping in like this.

Mr. Chairman: That is all right, you are forgiven, as you always are in our caucus.

Mr. Shymko: Is that a sort of sarcastic comment?

Mr. Chairman: No, no, that was a complimentary one.

Mr. Shymko: I understand the importance of the material that is prepared ahead of time by the counsel, but I feel somewhat uneasy when the counsel dictates to this committee that the appropriateness of meeting depends on whether or not he is prepared to have the material ready. I think it is this committee and the conflicts and problems we have--as some members sit on a number of committees--that decides when we meet and it is up to the counsel to adjust his time frame and work habits accordingly and have the material ready.

I know that Mr. Bell scrutinizes his presentations in minute detail, but maybe we can forgive him if some of his prepared material is more general in nature than he normally would like it to be. I do not accept the premise that, because the counsel had indicated late September, we should react to his wishes and set the dates accordingly.

Mr. Morin: May I make a suggestion? Perhaps it might be a good idea to invite the counsel to have a meeting with us and explain exactly what the procedures are all about--what is to be expected, what kind of meetings, what kind of encounters we are going to have with the representatives of ministries. Could we arrange this because Maurice Bossy and Pat Hayes are both new, and I do not believe Mr. Newman has ever sat on this committee before. Could we arrange this as soon as possible?

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Mr. Chairman: I think we could.

Mr. Shymko: With all due respect to Mr. Morin's suggestion, I think it makes a lot of sense that we do speak with counsel but, before that, I think we should make a decision about the most practical suggestion for our meetings in view of the circumstances of our responsibilities.

In September and October, you will be overloaded with so many committees that the work of this committee will be paralyzed. I think we should decide that at least a majority of the members who have been appointed to this standing committee, serve on it and start work as soon as possible.

I suggest that we meet for three weeks before the end of August, whether we start at the beginning of August or in a week's time; that we meet for three weeks solidly sometime between now and the end of August and, if necessary, leave the fourth remaining week to September. At least we should spend two weeks sometime before the end of August and retain an additional week for September.

Mr. Morin: That would be impossible for me. I am on the standing committee on procedural affairs and I think the whole month of August is taken already.

Mr. Shymko: How many members, for example, would be able to meet for two or three weeks between now and August; how many could? I could.

Mr. Henderson: Do you mean now?

Mr. Chairman: Between now and the end of August.

Mr. Shymko: Can we find two weeks as a minimum, three maximum, between now and the end of August?

Mr. Sheppard: I can.

Mr. Shymko: So five out of eight can make this.

Mr. Chairman: I am told that it might be impossible for the Ombudsman's office to be ready; I do not know.

Mr. Shymko: You are being told or you--

Interjection: October makes more sense.

Mr. Shymko: October? You may be back here then; you cannot, you will be back here.

:30 p.m.

Mr. Sheppard: I would suggest, if we are going to meet, we meet the last two weeks in August.

Mrs. Meslin: I think you have a real problem with the

ability of the ministry to be prepared by that time because there is a great deal of material. This committee has traditionally met through September and everything has been geared to that. The planning is going on already to prepare and present the cases, both from the ministry's side and the Ombudsman's side in September. I do not think you are going to be able to get the ministries to have the data they need to come before you in August.

Mr. Shymko: You are speaking on behalf of the ministry being prepared with--

Mrs. Meslin: The ministry and the Ombudsman. We generally book the month of September. Nothing is scheduled, nobody goes anywhere, everything has to be prepared for this committee.

Mr. Shymko: That is the Ombudsman's office.

Mrs. Meslin: Those ministries that will present their "recommendation denied" cases are also geared for a period in September when they know they are going to be called before this committee. They are working out their material towards that date. The difficulty I think you will face if you tell them they have to be ready in August is that they will not be ready.

Mr. Shymko: I had no idea this was such a tragic circumstance with the Ombudsman's office.

Mrs. Meslin: We are ready. We can go on tomorrow.

Mr. Shymko: I think you are ready.

Mrs. Meslin: But we are still at a stage where we have sent statements to those ministries to make sure that they and we understand we are talking about the same subject matter and we are awaiting their responses. John Bell usually puts together a briefing book for your committee. He goes through it with your committee, even before we sit down with you people, so you have some sense of what you are going to be dealing with. The briefing book has to be prepared and is in the process of being prepared now.

Mr. Shymko: Would it not be possible for the counsel to have such a briefing book ready within a period of two to three weeks?

Mrs. Meslin: You would have to talk to John Bell.

Mr. Shymko: I am sure it is quite possible. Some of the agencies with which we are dealing, such as the Workers' Compensation Board and the Liquor Control Board of Ontario and some of the others, are in a state where, whatever scrutiny or whatever particular cases before them have to appear or have been dealt with by the Ombudsman's office, I am sure they will have their stuff ready to come and appear before this committee, as they always have done. I do not know why it would take the Workers' Compensation Board another two months to prepare for--

Mrs. Meslin: I think you should ask them.

Mr. Shymko: I will not be easy on them. I do not accept the fact that we are totally paralysed and cannot even contemplate meeting earlier than September. I do not accept that as impossible.

If, however, the Ombudsman's office could appear, even tomorrow if necessary, as you have indicated, but the preparation of the documentation by the counsel requires some time, we could meet some time in August, unless the wishes of the committee are that we should continue the tradition of past meetings and do it after Labour Day, in September only. The House may be back some time at the beginning of October and once the House is back, we formally do not sit.

Mr. Chairman: We are now a standing committee, not a select committee.

Mr. Shymko: I know, but there will be a lot of standing committees meeting at that time and it will complicate things for those who sit on two or three committees.

Mr. Sheppard: The House usually comes back the second week in October.

Mr. Shymko: Yes, it usually comes back between October 9 and October 14.

Mr. Bossy: As far as the three committees I happen to be concerned, I cannot see how we can get any busier in September than we are going to be in August. If we add this committee we are going to overload ourselves in August. In view of the Legislature sitting now to the middle of July, it is going to be most difficult to get members because they are all looking for a break of a couple of weeks some place along the line. I think the courtesy could be extended to ourselves and we could have a bit of a break, too.

Mr. Sheppard: Tomorrow is July 12. There are still approximately three weeks left in July. There are the first two weeks in August. Is there any reason why we cannot try to meet the last two weeks in August? They are going to be tied up in committees through all of August and September.

Mr. Shymko: That is when I want to take my holidays. Forward, you are just selected.

Mr. Sheppard: When do you want to take your holidays?

Mr. Shymko: I do not know; perhaps the end of August.

Mr. Hayes: I have a problem with the last week of August.

Mr. Shymko: I have a problem with the last week of August, too.

Mr. Henderson: I also have a problem with the last of August. If we must meet before September, we might be better with

a couple of weeks in July, if that is of any use. Failing that, it seems to me, from what I am hearing and from my own situation, it might be better to wait until September.

Mr. Shymko: I can think of a number of important things that could be done that do not require--I can see a visit to the Ombudsman's office. I believe many members of this committee should familiarize themselves with the operation of the Ombudsman's office. I can see spending at least one or two days in that capacity. I can also see a day or two of briefings by counsel on the backlog of problems and issues for the committee.

I can see at least a week being spent not necessarily calling agencies and commissions. I can see staff from the Ombudsman's office such as legal people addressing us and explaining the work of their specific areas of responsibility. I think that should be done as soon as possible when we are here. It does not necessitate compiling documentation and calling ministries, boards and agencies.

Mr. Morin: I would prefer September.

Mr. Shymko: Not even for a week?

Mr. Morin: We could possibly take a week some time in August. I am involved with too many committees and either you participate fully or you do not. I feel September would be more suitable.

Mr. Hayes: Maybe we should bring the Ombudsman here?

Mr. Bossy: Prior to the other committees, if we took the week prior to August 19, which would be the week of August 12, it would not conflict with the three. I am sure you are tied up. I know some of the others are on the same committee as I am. I do not mind putting in another week in August if we did it prior to August 19; August 12 to 19.

Mr. Shymko: There is a meeting of our caucus in the middle of the week you mention and that is going to paralyse the work of this committee to a very high degree. That is tongue in cheek.

Maybe the bulk of the work should be in September, as Mr. Morin suggested. If there is any possibility, I suggest a week of familiarization with a visit to the Ombudsman's office and having the staff come here. We could do that between now and September. One period was suggested. I see no reason why we should leave that week for September when the work of actually dealing with cases should take priority. If there is time now to familiarize ourselves with the Ombudsman's office, let us do it, even if it means meeting after the House recesses. We could meet next week for four days, from a Monday to a Thursday or something.

8:40 p.m.

Mrs. Meslin: I think Mr. Shymko is suggesting there is an area of your role where you look at the role of the Ombudsman,

the statistics, the administrative side. That exercise does not normally take more than two days, unless we get into some very serious statistical questions. As a rule, it only takes a couple of days. I do not know that you have to set aside a week. You may not have to do that. You may be able to telescope it. Certainly, if you find some area that is going to need extensive investigation you could tack it on to the end of September. That is more moveable.

Mr. Chairman: Is it possible to have that meeting some time in August?

Mr. Shymko: I would think that would be in August. Is it really out of the question then? It does not require any preparation, as you were mentioning. Does it really?

Mrs. Meslin: It takes a little bit. We would just need a little time.

Mr. Sheppard: It would be pretty hard for us to meet next week, I would think.

Mr. Shymko: Why?

Mr. Sheppard: The lady says that she needs a little time for preparation.

Mr. Shymko: They want to prepare their speeches and presentations and things like that.

Mr. Chairman: The suggestion has been made that it be the last week of July. That would be the Tuesday and the Wednesday, the 30th and 31st.

Mr. Shymko: Yes. Half a day on Monday, full day on Tuesday and Wednesday and half a day on Thursday. That is a very good suggestion, to look at Monday, Tuesday, Wednesday and Thursday, the 29th, 30th and 31st in July and August 1.

Mr. Chairman: Is everyone in favour of those dates? Anyone opposed?

Mrs. Meslin: The 29th, 30th and 31st?

Mr. Shymko: And August 1.

Mr. Chairman: Four days.

Mr. Shymko: And Thursday, August 1. Preferably half a day on Monday and full days.

Mr. Morin: Mr. Chairman, the Speaker is waiting for me to replace him in the chair. May I be excused?

Mr. Shymko: I am supposed to speak as well.

Mr. Morin: No, I am replacing the Speaker.

Mr. Chairman: You are excused, sir.

Mr. Shymko: I may be speaking when you sit in the chair.

Mr. Morin: That would be great. I will bring you to order.

Mr. Chairman: Now I would ask that we consider the budget.

Mr. Shymko: Can we just agree that in addition to this particular week that we look at three full weeks in September?

Mr. Chairman: Yes, we can discuss that. I think we can.

Mr. Shymko: So that we suggest to Mr. Bell that we will be having a familiarization type of meeting starting on July 29 which would not require all his documentation but that we meet for three weeks in September following Labour Day.

Mr. Chairman: The week of the 17th is going to be a very difficult week because all of you are going to be invited to the International Ploughing Match, and I hope that you attend because it is being held in the great county of Elgin.

Mr. Shymko: Is that in the middle of the week?

Mr. Chairman: That is on the 17th and I want you up there. I am hoping you will all come and plough.

Mr. Sheppard: Will you throw a party for us all?

Mr. Shymko: September?

Mr. Chairman: September 17 is the International Ploughing Match in the county of Elgin, just north of St. Thomas.

Mr. Shymko: How long is that being held?

Mr. Chairman: That is being held all week but you will be invited on Tuesday to participate in the ploughing. I hope all the members of the committee as well as the members of the Legislature will be there on that occasion. We will arrange for you to plough with either tractors, horses or oxen.

Could we finalize the budget?

Mr. Shymko: Why do we not finalize a proposal at least for some dates in September and then go into the budget?

Mr. Chairman: Okay.

Mr. Shymko: I would suggest that since September 2 is Labour Day there is a possibility of sitting on Tuesday, Wednesday, Thursday and Friday of that week and four days in the week of September 8. I am not going to comment on the following week.

Mr. Chairman: That week will be out Tuesday. We could meet in St. Thomas studying the ploughing match.

Mr. Shymko: Then let us look at the third week, the week the 22nd. We have our three weeks covered in September, which would give enough time for other committees.

Mr. Chairman: Is anyone opposed to that suggestion?

Mr. Newman: I am opposed to it.

Mr. Sheppard: You are opposed to everything, Bernie.

Mr. Newman: Tell me when I can find the time. It is easy for some of you to come along. We have only 48 members.

Mr. Sheppard: We have only 52 members.

Mr. Hayes: We have only 25.

Mr. Shymko: We have one member who complained he was not on any committee.

Mr. Henderson: Have one of mine.

Mr. Chairman: Could we finalize the first two weeks of September?

Mr. Shymko: We can finalize all three weeks for September.

Mr. Chairman: Yes, but in order to compromise, can we finalize the first two weeks?

Mr. Newman: Not with me because I happen to have other committees also.

Mr. Chairman: I see.

Mr. Shymko: The first two weeks and the last week?

Mr. Henderson: It is tricky because I have some other committees. If I tie up three weeks of September with them, there will have to be a lot of substituting when the other committees come along and want to meet in September.

Mr. Shymko: You obviously cannot sit on two committees. You will have to make a choice as to which one you will be sitting on.

Mr. Villeneuve: Not on the same day.

Mr. Shymko: Not on the same day.

Mr. Henderson: If there is a conflict, are you prepared if I do not show sometimes? It may be very hard for those of us on three committees to get subs because everybody else in the caucus and in the cabinet is on three committees. They are not going to

want to sub.

Mr. Shymko: I do not know how often a quorum is required. Normally for about two or three days we simply listen to cases and so on. Usually the last two days in the last week when we start wrapping up and decisions are made, are when we need the quorum because we deal with the recommendations.

Mr. Sheppard: You would probably be called out of another committee if you were required for a vote.

Mr. Shymko: It is quite possible that you may miss--

Mr. Chairman: Could we finalize two weeks in September as a compromise?

Mr. Newman: Do not worry about me. You can go ahead and meet. Unless the other commitment is changed--

Mr. Chairman: Okay, fine.

Mr. Shymko: Do you want to finalize the second and third week?

Mr. Chairman: The first and second week.

Mr. Shymko: The first and second, yes.

Mr. Chairman: The third week is the one where I would like to have everyone who can attend the ploughing match in Elgin.

Mr. Sheppard: We will not sit then on the third week in September so I can take in your ploughing match in St. Thomas.

Mr. Shymko: Agreed?

Mr. Sheppard: Agreed.

Mr. Shymko: The first and second week and then we will see what remains.

Mr. Chairman: Why do we not tentatively set that up.

Mr. Shymko: So what are the dates again? July 29?

8:50 p.m.

Mr. Chairman: Can we discuss the budget and finalize that?

Mr. Shymko: I look at the counsel's fees. I recall them as quite substantial, on a yearly basis, so I am surprised to see this figure, unless it is one which had been agreed to. Is this for the year's services?

Mr. Chairman: That is what I understand.

Mr. Shymko: That is fine.

Mr. Chairman: Is there any further discussion on the budget?

Mr. Hayes: There is no problem with it.

Mr. Shymko: Mr. Bossy, why do you not move we adopt it?

Mr. Hayes: I can do it.

Mr. Chairman: Mr. Hayes has moved we adopt the budget.

Mr. Bossy: I would sooner not. I am going to sit tight cause, with all the discussions that have taken place here, I have no alternative but for me to have somebody sit in my place on this committee.

Mr. Shymko: You cannot do that.

Mr. Bossy: I already have three weeks definite sitting with the standing committee on procedural affairs and agencies, boards and commissions and that goes, I believe, right to September 7.

Mr. Chairman: You will be sitting the first week with procedural.

Mr. Bossy: Then we have to sit on the private bills.

Mr. Shymko: These are the burdens of forming a government, Mr. Bossy.

Mr. Chairman: Mr. Bossy is quite aware of that because he has sat in the federal House. It has been seconded by Mr. Appard that the budget be approved as submitted.

Mr. Chairman: Now we have to take it one step further. We have not only to approve but submit it to the Board of Internal Economy.

Mr. Shymko: Eternal economy.

Mr. Chairman: Right. Are all in favour of submitting this to the board?

Motion agreed to.

Mr. Chairman: The next order of business, which I do not understand, is the establishment of a subcommittee on communications with the public.

Mr. Shymko: Could somebody explain to us what this is all about?

Mr. Chairman: Possibly the representative from the ombudsman's office could do that.

Mrs. Meslin: Generally, the Ombudsman's standing

committee receives letters from the public complaining about some actions the Ombudsman has taken. This committee usually strikes off a representative of each party to look into that with the clerk and decide how they are going to respond to these people. They meet with representatives of the Ombudsman's senior staff to discuss it and then the subcommittee recommends to the committee as a whole what they are going to do.

Mr. Chairman: Then we have a representative of each party on that subcommittee.

Mr. Shymko: I was not too sure what this meant, but I recall some very important cases and concerns that required an answer from this committee, which is perceived by the public as being a watchdog of the Ombudsman.

Therefore, any complaints channelled against the Ombudsman would require a committee's deliberations, and the chairman's word or evaluation of that particular complaint in most cases would finalize the issue of concern. It requires a great deal of tact at times and real acuteness. The standing committee itself as a whole body cannot possibly go through all these communications.

What I want to say is that such a subcommittee, if struck, would have to meet separately, perhaps on the days of the sittings, which I find very difficult because when you sit morning and afternoon you are not going to sit at night going through correspondence. It would require additional days for the particular three members to go through that correspondence and that has to be taken into consideration when you do strike a subcommittee. It may require two or three--

Mr. Chairman: I think the terms of reference are on the last page with respect to the standing committee on the Ombudsman. It reads: "That a subcommittee be struck to consider on the committee's behalf communications from the public, the subcommittee to be composed of the following members"--and it mentions the members from the previous committee.

"Substitution shall be permitted on written notice. All communications from the public to the committee shall be referred to the subcommittee, which shall review and respond to them, provided that all decisions by the subcommittee shall be unanimous. Any matters which are not decided unanimously by the subcommittee shall be considered by the full committee. The subcommittee shall report to the committee, for consideration by it, any matters which in the subcommittee's opinion warrant the full committee's attention. The subcommittee shall, subject to direction by the committee, determine its procedures."

Could we have a motion to approve of that subcommittee?

Mr. Shymko moves that the committee establish a subcommittee on communications with the public.

Motion agreed to.

Mr. Chairman: I understand in that motion you adopt the

terms of reference.

Mr. Shymko: Yes.

Mr. Chairman: They are contained in the subcommittee. I assume each party will then decide who its representative will be the subcommittee.

Mr. Shymko: I suggest that in the first week of meeting the names should be suggested to the chairman.

Mr. Chairman: Yes, I think that would be satisfactory. We have already discussed the schedule of business, I believe. We are going to meet in August.

Mr. Sheppard: The last week in July.

Mr. Chairman: Is it July?

Mr. Shymko: July 29, 30, 31 and August 1.

Mr. Chairman: To familiarize ourselves with the role of the Ombudsman, I assume we can have all the information that will be necessary from the Ombudsman's office for that meeting.

Mr. Shymko: Might I suggest also that, in preparation for that first week, we meet with the counsel?

Mr. Chairman: Yes, that is an excellent suggestion.

Mr. Shymko: Preferably on the first day.

Mr. Chairman: Yes, we should.

Mr. Shymko: What are our dates in September?

Mr. Chairman: The first two weeks.

Mr. Shymko: That excludes Labour Day.

Mr. Sheppard: September 3 to 6 and September 9 to 12.

Mr. Chairman: We will take it from there. If there is no further discussion, I will entertain a motion for adjournment.

The committee adjourned at 8:59 p.m.

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Government
Publications

STANDING COMMITTEE ON THE OMBUDSMAN
ORIENTATION
MONDAY, JULY 29, 1985



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Pierce, F. J. (Rainy River PC)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Callahan, R. V. (Brampton L) for Mr. Bossy

Clerk: Decker, T.

Staff:

Bell, J., Counsel

Madisso, M., Research Officer, Legislative Research Service

From the Office of the Ombudsman:

Meslin, E. Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, July 29, 1985

The committee met at 1:45 p.m. in committee room 2.

ORIENTATION

Mr. Chairman: Dr. Hill had planned to be with us this afternoon, but unfortunately his mother passed away. His executive assistant, Eleanor Meslin, will make a statement to the committee.

Mrs. Meslin: Dr. Hill will be returning this evening and he will be with you tomorrow. He expresses his regrets that he could not be here.

On behalf of Dr. Hill, I welcome the opportunity to appear before you today. As members of this standing committee, you play a vital role in the success of the Ombudsman. We consider our meetings with you to be of the highest importance. We congratulate the new members of the Legislature among you. You have been chosen by the electorate and have won the unique opportunity to serve this province.

We congratulate you with a touch of mixed feelings. When your committee gained the services of the member for Carleton East (Mr. Morin), we unfortunately lost our director of regional services. However, there is some consolation. We know Mr. Morin will continue to serve the Office of the Ombudsman in his present role on the standing committee.

Although you are a brand-new committee with many new members, we are confident our relationship will be co-operative and mutually productive because together we share the same goal, to ensure the Office of the Ombudsman is the most effective and efficient operation possible.

In consultation with your very able counsel, John Bell, and your chairman, Mr. McNeil, it was agreed that the next two days would be spent as an orientation and briefing session. This will give us an opportunity to give you an overview of our entire operation and an opportunity to become familiar with our staff and procedures.

Commencing tomorrow morning at 10 a.m., you will tour our facilities in the Lillian Massey Building and begin the briefings with our staff. Since the briefing will last all day, we would like to provide lunch for the committee. We are delighted you will be spending the next two days with us because we believe it will be invaluable for you to have a first-hand look at what we do and how we do it. During that time, you will hear from the key people in our organization. They will brief you on their various responsibilities and we welcome your questions.

On August 1, you will meet back here and Dr. Hill, myself

and several of our key staff will be available to you if you need us.

In September we will meet for you to consider statistical, administrative and budget matters. Most important, we will meet for you to consider our recommendation-denied cases, cases in which the governmental organization has refused to implement our recommendations. When we meet in September, Dr. Hill will also give you a comprehensive report on what this office has done and where we are going. Until then, we welcome the opportunity over the next few days for us to get acquainted and assist you wherever possible. I will look forward to seeing you tomorrow.

Mr. Chairman: Now we will turn over the meeting to our legal adviser.

Mr. Bell: There are a lot of new faces. I am pleased to be able to work with you and for you again and look forward to the next few weeks, and particularly to the sessions in September, for some extremely interesting, important and productive work.

Before I start, can we take an inventory of materials you should have before you? Then I will give you an idea of what I intend by those materials. Each of you should have a black three-ring binder which has five subtabs. I propose to spend a substantial part of this afternoon on the material in that binder as a means of briefing you, particularly those members new to the committee and new to the assembly, on relevant issues.

You should also have from the clerk this afternoon a document that is the proposed agenda of the four days of sittings this week. Mr. Decker will distribute copies to each of you and I will give you an overview of what we are going to do this week and how the matters on the agenda relate one to the other.

Before I do that, I will introduce someone who has become an increasingly important member of the committee's support team. To my left is Merike Madisso. She is a lawyer by profession and on the staff of the legislative research service.

A year ago, in conjunction with the Board of Internal Economy, the committee decided it should expand its support staff, in one way, by Merike's services and, in another way, to diminish the extent this committee relied upon its legal counsel for work. It is probably the "Do not put all your eggs in one basket" syndrome. Quite appropriately, a decision was made to split the brief.

As you will see in the weeks to come, I will attend to some specific matters on your behalf and with you and Merike will attend to other specific matters. The report writing will be a collaboration. You will be hearing from Merike specifically on Thursday in regard to certain items, if you concur in my suggestions as to the items that should be included.

Today I propose to give you a thorough and exhaustive, and exhausting, briefing on what this committee is all about, what it has been all about, and in general terms, what the Ombudsman is

all about in the context of Ontario, this assembly and this committee. The reading materials I have selected are ones, with a couple of exceptions, I believe to be the best source of what this committee is all about; this committee's own writings. I have excerpted for you, under various topics, portions of previous reports where the committee has set policies.

Today should wear you out because Ombudsman matters may come as a new concept to some of you. The concept is historically foreign to parliamentary democracy and one has to stretch and strain to understand it.

I do not propose to read all the pages today. I will highlight and give background on certain matters so by the end of the day you will have a working knowledge of Ombudsman things. The day-and-a-half of briefing with the Ombudsman which follows that will therefore be much more meaningful.

All Ombudsman committees since 1976 have had these sessions and they have been very productive. An in-person visit to the office and discussions with Dr. Hill and his staff will serve you well for your September schedule.

On Thursday the committee will reconvene to discuss preliminary matters. I can give you two or three issues for the agenda which will soon be finalized.

You have a subcommittee to deal with communications from the public on Ombudsman matters. I suggest you appoint three members to that committee on Thursday. The subcommittee can report back to the whole committee before you end in September. Merike Madisso will discuss this with you on Thursday. Ed Philip could assist you with the subcommittee.

That is it for this week. Yuri Shymko, among others, wanted to get on with the Ombudsman's 10th anniversary report. It is not possible to do that. First, it is not possible to get organized so quickly.

2 p.m.

Second, it would be unfair to ask you to dive into these matters without being properly briefed.

This present standing committee, previously a select committee, and that is a distinction without a difference in my opinion, has been called many things such as unique, nonpartisan, ongoing, continuing, adversarial, all of which are appropriate to the committee's hearings and dealings, depending on the subject matter.

To use an example, it is not like your colleague committee down the hall, social development, which is considering Bill 30. There are a lot of new members on that committee. It is easier for them to deal with that issue cold than it is for you to deal with your issues for the following reason. You do not function in a vacuum and out of context or out of relationship with what has gone on previously.

One of your ongoing functions is as a monitoring device, not only for what the Ombudsman has done on an annual basis over the last 12 months, but also for what the governmental organizations or so-called ministries have done as far as their responsibilities are concerned over the last 12 months. In my judgement, it would be unfair to ask you to dive right into things without some necessary briefing.

One of the other matters you have responsibility for is the enactment of certain general rules to guide the Ombudsman in the exercise of his functions. Again, it is a little unfair to ask you to formulate any general rules unless you have had a sufficient background and taste of what the Ombudsman is all about.

Those are essentially the reasons you are not diving into that report this week. It will make your work easier in September. It will make it more efficient and productive in my opinion. It will make your participation more significant and meaningful to each of you.

If there are no questions on that introduction, can I ask you to open the black brief? Before we get into the substance of the material, you have four pages immediately inside the cover. The first one will help you organize your life around this committee as far as the first two weeks in September are concerned. This is what we have set forth as your pro forma schedule.

I know there has been some discussion and some possibility of sitting in the last week in September. I have presumed that is not available to you, so I have set an ambitious, very full and tight schedule for all the matters that are outstanding. If we do have the luxury of the last week, it will permit some spillage. It will also permit some time, formally or informally as the case may be, to deliberate on your next report. We can decide that and work it out as we start in September.

Eleanor Meslin mentioned to you in her opening the so-called recommendation-denied cases. I will have more to say about that later, but this is arguably the most important function you have. It is certainly the most important function the Ombudsman has. It is the means whereby he in effect petitions the Legislature to act in such a way on his behalf and in support of him, and you as the agent or vehicle of the Legislature take up those responsibilities for the House, at least in a first-stage matter.

You can see that right in the afternoon of the first day we start, that is September 3, you will get right into the first recommendation-denied cases. They are going to take you right through the rest of that week and through Wednesday of the following week. The substantial majority of your work in September will be taken with these recommendation-denied cases. I will be explaining to you how your format and procedure work.

The remaining three pages, short of the index to this brief, set forth the agenda for you from today up to and including September 12.

If anybody is wondering what these numbers and letters are, the Roman numerals in the schedule, they correspond to the items in the index. They will have further meaning for you when we start in September. For those of you who wish the material before September 3, we will arrange to have it delivered to you.

In any event, we will be giving each of you three volumes of materials subdivided by the subject matter. They will serve as your briefing books, points of reference and method of preparation, if you will, on each of the topics presented.

It is not as bad as it may sound right now. In the recommendation-denied cases, the first item you will see in each of those tabs will be a statement or a concise summary of the material facts of those cases, laid out by issues, material facts and relative positions of the parties--that is, the Ombudsman and the governmental organizations.

Those documents are included specifically to assist you to brief yourselves as quickly as possible on the meaningful issues so you can participate immediately and effectively on any one case. It is recognized that with all your other schedules, committee and otherwise, preparation time is at a premium. We will not presume that you have to read every stick of paper in those three volumes before you can effectively participate in this committee. A substantial part of it will be for background information and material as and when you require it.

That is the relationship of the schedule and the agenda to what you are going to do in September. First, are there any questions up to this point?

As you see from the index to this brief, I am going to deal with five major areas today, not necessarily in the order that you see them, but hopefully in the order that will be most meaningful to you.

First, can you just turn inside tab 1 dealing with the committee's terms of reference? Committees only have the ability in specific terms to do what the Legislature sets out in writing by order that committees can do. Your *raison d'être*, if you will, your ability to act, is set forth in item 7 of the Votes and Proceedings of Wednesday, July 10. Looking at that term of reference, you can see you are given, as of now, two general areas of authority.

The first area is to review and consider from time to time the reports of the Ombudsman as they become available and, second, as the committee deems necessary pursuant to subsection 16(1) of the Ombudsman Act, to formulate from time to time general rules for the guidance of the Ombudsman in the exercise of his functions under the act. Having done those two things, you must then report thereon to the Legislature and make such recommendations as the committee deems appropriate.

2:10 p.m.

The remaining part of the terms of reference is really a

housekeeping one to ensure that you do not step on the toes of the House when it is dealing with other matters.

What is missing from your term of reference is the matter of your authority to receive, debate and approve the estimates of the Office of the Ombudsman as they are referred to you after approval by the Board of Internal Economy. I am told by Todd Decker in the office of the Clerk that there is a good reason for that. Because we are into a new parliament, it is a matter of procedure and practice that until the Treasurer (Mr. Nixon) tables his first budget there are no estimates of any government departments or budgets. Technically, the Ombudsman does not have a budget or estimates for you to consider.

Some time after the House resumes in October and after the Treasurer tables his first budget, there will be a direction from the House to this committee to consider, debate and approve, as the case may be, the estimates of the Ombudsman. Until that happens, you do not have that piece of work to do.

Regrettably, the discussion you had at your organizational meeting on the estimates is a bit academic. There is at least one item on which you are going to have to sit concurrently with the House. That can be accomplished in one sitting; it has before. It is limited to no more than a three-hour debate and each of the members, as they are advised and as their parties are advised, participates in the manner considered necessary. That is off the table for a while.

Mr. Philip: There is no rule that says estimates cannot be dealt with by a committee when the House is not in session.

Mr. Bell: No, except that now I am told technically there are no estimates to consider.

Mr. Philip: I am saying the estimates could be dealt with at the Christmas recess.

Mr. Bell: Yes. There is no magic in when you do them. The only pressure would come from the Ombudsman if he believed he had to have his estimates approved within a time so it could go on to the next stage. I do not know. That is something you might want to discuss with him over the next three days.

For the purpose of the remainder of this afternoon, we are going to deal with the two other, and in my opinion, more important aspects of your terms of reference: the reviewing and considering of reports from time to time as they become available and then the enactment of general rules.

May I ask you to turn to tab 2? These pages are not numbered under this part but perhaps you could find the Ombudsman Act, 1975, located about halfway through that material. The first part of that is something from the committee's fourth report that I will brief you on in a moment.

Mr. Newman: What page?

Mr. Bell: In tab 2, sir. It is not numbered, but if you go about halfway through the material you will see the Ombudsman Act.

Mr. Newman: After what? There are tabs 1, 2, 3, 4 and 5.

Mr. Bell: Tab 2.

Mr. Callahan: I think they are missing it because it is directly opposite tab 1(c) and when you turn over tab 1(c) you do not see tab 2 there.

Mr. Bell: Does everyone have tab 2 in his material? Okay.

Mr. Philip: If you go to the back of tab 2, you run into the back of that.

Mr. Henderson: The Ombudsman Act, 1980?

Mr. Bell: No, keep going. You are getting close. Keep going. There are a couple of amending bills. You have it right there. It is headed "Chapter 325, Ombudsman Act." The clerk will help you get it.

While you are locating that, let me give you a little historical perspective. It is a bit trite to say that but for the Ombudsman there would not be this committee, but that is more meaningful than you might think at first blush. The act was passed by the House in 1975. It succeeded at least two reports by special committees, both of which were chaired by Vernon Singer, who was one of the pioneers in Ontario in ombudsman matters. People such as Vern Singer, Jim Renwick and Larry Grossman, who saw the need for an ombudsman as part of this system of government, were generally supportive of matters leading to the act.

When the act was passed and Arthur Maloney was appointed and sworn in, I believe in October 1975, there was no committee. It was not considered necessary to have a committee. World-wide, there are no more than three or four so-called ombudsman committees. There are relatively few committees of any parliament or legislature that deal with ombudsman matters to the extent this committee does.

One of the first formal acts of Arthur Maloney as Ombudsman was to prepare and submit to the Minister of Housing the so-called North Pickering report, dealing with his findings and recommendations as to the government's handling of the land acquisition process in North Pickering through land agents it had retained. The Minister of Housing made the report public and thereby created a debate in the public forum about the pros and cons of the positions of the Ombudsman and of the Minister of Housing. Those of you who can recall the early part of July 1976 will remember the headlines were fairly extensively devoted to North Pickering matters.

The then Premier, Mr. Davis, attempted to intervene and conducted certain meetings between the Minister of Housing, the late John Rhodes, and Arthur Maloney to try to resolve the

issue. The Ombudsman in his report said: "Bottom line: Government, you did not do it the right way. People suffered losses because they sold their properties for too little. You compensate them for what they should have obtained." It had significant dollar implications.

In some way, Arthur Maloney was able to persuade the Premier that, because his meetings with Rhodes were unsuccessful in resolving issues and because the House was then in summer recess, there was no immediate way the Ombudsman could seek the assistance of the Legislature in his efforts. He convinced the Premier to strike a select committee on the Ombudsman, your predecessor committee. It was initially given a specific term of reference, to deal with the North Pickering report.

2:20 p.m.

Starting in July 1976 and going through September, not continuously, this committee met for a number of sessions with all persons concerned and ultimately came to an agreement between the Ombudsman and the Minister of Housing to resolve the matters that were in dispute, at least as they surrounded and dealt with Arthur Maloney's report.

In the ordinary course of things, that should have and could have exhausted the function of this committee and it would have disbanded like other select committees, never to be heard from again. But it became very apparent to the committee, the Ombudsman and, I believe, the government that there should be a continuous committee functioning on an ongoing basis to deal with Ombudsman matters. So rather than be disbanded after it tabled its first report in the House, the committee sought and was given an expanded term of reference. The term of reference it was given is substantially identical to the term of reference we just read here.

From the late fall of 1976 until today, the select committee on the Ombudsman has functioned to receive and consider all reports of the Ombudsman as he has tabled them in the Legislature, and to consider, when appropriate, enacting general rules for the guidance of the Ombudsman in the exercise of his functions.

With that overview, let us look at a couple of sections in the act that will place the committee's functioning in even more detailed context. The Ombudsman substantially performs an investigative and a recommending function. The Ombudsman has no teeth: He cannot order anybody to do anything; he cannot require any government organization to do such-and-such; he cannot require the repeal of any legislation. All he can do is to receive a complaint in writing from a member of the public, or he may decide on his own to investigate one of four things: a decision, recommendation, act or omission involving a governmental organization.

If you turn to section 15 of the act, at page 4 of the statute, you will see subsection 15(1) sets out the Ombudsman's function as, "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of

a governmental organization and affecting any person or body of persons in his or its personal capacity."

That sets forth the circumstances that put the Ombudsman process into motion in a substantial number of cases. Subsection 15(2) tells it the other way. All that subsection says is that he may, on his own motion, without receiving a formal complaint, investigate any one of those matters that 15(1) sets forth.

He starts with the receipt of a complaint, and thereafter, in substantial terms his function is an investigative one. His office is organized and set up in a mechanical and physical way to provide the best, most efficient and most productive investigations that have to be conducted in the circumstances of the complaints.

When his investigation is complete, he has to do something with it. I have told you he cannot issue any orders. He cannot require anybody to do something or refrain from doing anything. What he can do is set forth in section 22 of this legislation, on page 8 of this act.

Sections 15 through 21 deal with the whys and wherefores of the investigation process. I am not going to deal with them today; they will be dealt with tomorrow. It is not relevant for our purposes, other than to touch upon these functions.

When he is finished the investigation, he gets to the section 22 stage. What that section says, particularly subsection 22(1), is that when his investigation is complete--or in the words of the statute, "This section applies in every case where, after making an investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission which was the subject matter of the investigation..."

So when he concludes his investigation he forms an opinion about the subject matter in any one of the categories set out in subsection 22(1). Those categories are clause 22(1)(a), where the subject matter "appears to have been contrary to law," and--this next one is probably the most frequently used--clause 22(1)(b), "was unreasonable, unjust, oppressive or improperly discriminatory, or was in accordance with a rule of law or a provision of any act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory." It is a little confusing.

The next is clause 22(1)(c), "was based wholly or partly on a mistake of law or fact." The last is clause 22(1)(d), "was wrong." Ironically, this committee has seen very few cases where he has said the decisions were just wrong. They have always been under the others. I would consider "wrong" to be the basket one. If I was an Ombudsman, I would be using it more than the others because it is less difficult to justify.

In any event, once he forms an opinion on any one or more of those areas, subsection 22(3) becomes mandatory. When he chooses one or more of those seven clauses in subsection 22(3)--and those clauses are intended to be categories of action for the government

to take--you go down immediately to the paragraph under clause 22(3)(g).

It says, "The Ombudsman shall report his opinion, and his reasons therefor, to the appropriate governmental organization, and may make such recommendations as he thinks fit and he may request the governmental organization to notify him, within a specified time, of the steps, if any, it proposes to take..."

So the steps are: receipt of a complaint, or a decision to investigate on his own; investigation according to the sections; formulations of opinions about the subject matter, as per subsection 22(1); opinions as to what should be done about the matter, as per subsection 22(3); and then the compulsory reporting to the governmental organization, with his opinion and his reasons and recommendations.

The Ombudsman's most important function is his ability to seek redress on the complainant's behalf and that section is his vehicle to petition the Legislature for support.

2:30 p.m.

Following that, subsection 22(4) says, "If within a reasonable period of time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate..." Those are the key words, "adequate and appropriate." In other words, if the governmental organization does not do anything that he believes to be adequate and appropriate, vis-à-vis his recommendations, what may he do? He can do one of three things. He can do nothing and let it die there. As this act says, he "may send a copy of the report and recommendations to the Premier."

Believe it or not, the legislation intends that the Premier or the Premier's office at this stage is to act in the nature of a mediator between one of his ministers or one of his governmental organizations and the Office of the Ombudsman to see whether his intervention may assist in an appropriate resolution.

When we get to the material in the fall, you will see that on each of these so-called recommendation-denied cases the Ombudsman has sent a copy of his report to the Premier. You will see on each occasion the very same letter back from the Premier acknowledging receipt of the report and thanking the Ombudsman for bringing it to his attention.

Translated, the Premier has decided as a matter of policy not to become involved. The matter is to be worked out between the Ombudsman, the head of the governmental organization, this committee and the Legislature. You will hear about that process. Continuing with subsection 22(4), after he sends the report to the Premier, the Ombudsman "may thereafter make such report to the assembly on the matter as he thinks fit."

That is the process from the beginning of the Ombudsman's dealings through the assembly's dealings. He gets his complaint, decides to investigate it, investigates it, forms opinions on the

complaint and what should be done, makes a report to the governmental organization on his opinions with his reasons and recommendations on how the matter should be remedied, and requires the governmental organization to respond in an adequate and appropriate way within a period of time. If it refuses or if it does not respond in an adequate or appropriate way, he may refer it to the Premier and thereafter he may refer it to the assembly.

By your terms of reference, once it is referred to the assembly you automatically get it. Instead of the Ombudsman making his case on the floor of the House, as it is contemplated ombudsmen should do in some jurisdictions, this committee acting on behalf of the House undertakes that function.

This committee does what is necessary to hear the reasons the Ombudsman has made the recommendation and formed the opinions in the way he has, and to hear from the governmental organization why it will not, cannot or does not intend to implement the recommendations. After having heard all that, you report to the Legislature with your findings and recommendations. That is the so-called recommendation-denied process.

That is what is going to take substantially three quarters of your time in September. You have 19 recommendation-denied cases where the Ombudsman has reported to a governmental organization with a recommendation and the governmental organization has said, "No, we cannot or we will not do it." You have to decide whose position is to be preferred and to be supported.

Once you make those decisions 19 times, you will report to the Legislature whether the Ombudsman's recommendation is to be implemented by the governmental organization or the governmental organization's position is appropriate or adequate and you do not propose to support the Ombudsman.

You have never been a rubber stamp for either side. You have supported the Ombudsman's recommendations on many occasions when you considered it appropriate to do so. You have also supported the position of the governmental organization on many occasions when it was appropriate to do so. When you have considered it necessary, you have criticized the Ombudsman for something he did or did not do in his investigation and report writing. On the other hand, you have criticized governmental organizations for what they have or have not done in their report writing.

Mr. Callahan: Could you clarify something for me? It says in the terms of reference that our function is, "To review and consider from time to time the reports of the Ombudsman as they become available and as the committee deems necessary, pursuant to subsection 16(1) of the Ombudsman Act." As I read subsection 16(1), it is simply a general rule.

Mr. Bell: The problem with that term of reference is, they left the comma out. It should read, "To review and consider from time to time the reports of the Ombudsman as they become available, and as the committee deems necessary."

Mr. Callahan: I see.

Mr. Bell: "Deems necessary" is to be read with the rules. The writing could be a little clearer.

Mr. Callahan does make a good point. Why not leave it open for questions as I finish each one of these parts? I think I have come to the end of a part now, and that is an overview of the Ombudsman Act and what the Ombudsman does. Before we tackle what you do vis-à-vis that function, I will entertain any questions you might have.

Mr. Philip: The third alternative is to come down neither on the side of the Ombudsman nor the government agency, but to come up with our own proposal as to the facts as we see them. We have come up with proposals that say, "The Ombudsman is partially right on this aspect of this case, and the government or the ministry is right on this aspect," and come out with a compromise solution that we propose.

It seems to me one of the more interesting things that is going on, not only in this province but in the other provinces also, is the definition of what a governmental organization is. There have been disputes as to where the authority of the Ombudsman is, particularly when it comes to certain crown corporations. I am wondering whether you want to comment on that.

Mr. Bell: You are right. It is a very important issue that is always raised annually when you deal with the Ombudsman matters. I think you are going to find in at least one of the recommendation-denied cases it is going to be raised again.

The Ombudsman in the anniversary report refers to the fact that the Ontario Labour Relations Board has challenged his jurisdiction, and he has now retained counsel to bring an application in the Supreme Court of Ontario for a determination of his jurisdiction.

I think, though, for today it would be a little distracting. It is going to come up in another way. Among the things we are going to discuss with the Ombudsman and the Deputy Attorney General when they appear before you in the fall are the proposed amendments to the Ombudsman Act. What you are going to see is that the government is considering now, or will be in the very near future, as a matter of policy just what type of an Ombudsman it wants in so far as an expanded term of reference is concerned. When I say "term of reference," I mean expanded to other areas like municipalities or all boards and agencies, whatever the relationship is with government. It is a bit distracting today.

Mr. Shymko: If counsel explains the whole procedure leading to the final stage of the report that is presented to the Legislative Assembly, could he explain to the new members of the committee that at times there are special reports that this committee intends to present to the Legislature which are shot down and do not even have a chance to be presented? That happened with one special report, do you recall, in 1985?

Mr. Bell: It is on the agenda.

Mr. Shymko: Is it on the agenda? In the deliberations of this now standing committee, could you perhaps brief us on the politics whereby a government with 20 members getting up can veto even the discussion of a report of this committee? Could this also be done with a standing committee when we have special reports?

2:40 p.m.

Mr. Bell: I think it can be done with any committee if the government takes those steps to do it. I have included in the material the part where this committee had to take extraordinary steps to get matters debated in the past. Can I save that answer until then?

You have raised another good point. Let me finish with the Ombudsman Act because I want to make clear in your minds how the Ombudsman reports. You do not have to turn to it, but section 12 of the Ombudsman Act says, "The Ombudsman shall report annually upon the affairs of his office to the...assembly." He has an obligation to report at least once a year on the affairs of his office. He has no obligation to report on any other matters or at any other time.

You will remember section 22 spoke of reporting to a governmental organization, then to the Premier, and then, if he thinks it advisable, to the assembly. When you read the sections of the act, the potential is there for the Ombudsman, if he chooses, to report once annually on the affairs of his office, and to report specially on each one of these recommendation-denied cases that are not resolved. If he did that, it would be a somewhat chaotic situation. What Ontario's ombudsmen have done, with one exception, is saved up all of their recommendation-denied cases and included them in their annual reports, so that they report to the assembly generally once only.

They contain everything. The report contains all of the matters. When you tie that in with your term of reference, you are given the authority to receive and consider his reports as are tabled from time to time, in practical terms you consider only one report a year, but in real terms it is a report that contains perhaps as many as 19 subreports, which this one does.

While we are doing the terms of reference, let me tell you from a historical perspective, this committee was given, in a unanimous resolution of the House back in 1980, I think, a specific duty to consider the matter of international human rights and to report to the House on what ways the assembly might make its voice heard on this matter.

There was a special report that this committee made to the House, recommending that its terms of reference be further expanded to include the human rights component in an advisory way to the House. The House has today chosen not to do anything with that report and with that recommendation. Whether with the new government there will be any change remains to be seen, but one of the things you have to do as part of your work this fall is to review the basic precepts of that report and that recommendation and to decide whether you wish to again remind the House there is

an outstanding report of yours and you wish to have that matter addressed. It is somewhat ironic that the matter is being raised this week, in view of world affairs in at least two countries in Africa.

When I say it was a unanimous resolution, I mean it. It was initially raised by James Renwick, but it was supported unequivocally by all of the parties in the debate, and you participated specifically in that debate, Mr. Shymko.

That is your report. That is where the Ombudsman finishes off and where you start. You start after he has finished his work under the act. Are there any questions?

Mr. Sheppard: I sat in on two or three committee meetings when one of the other members was absent, and I found it very interesting. I think we were dealing with the Workers' Compensation Board cases, where the Ombudsman and the WCB brought their professional people forward. I am sure the rest of the committee will find it very interesting when we get into those items later.

Mr. Bell: You are right. Dr. Henderson will be interested to know that when we get to the Workers' Compensation Board, there are at least three cases dealing exclusively with issues of psychiatric opinion and which opinion is to be preferred to the other.

Mr. Philip: Do we have a resident psychiatrist giving out professional opinions?

Mr. Bell: The closest analogy that one can make to what this committee does on the recommendation-denied cases is to say you sit as a court of appeal. The Ombudsman's office cringes when the words "court of appeal" are used, but you have to call a spade a spade or a shovel, as the case may be. You are asked to listen to both points of view and to select one from the other, or as Ed said, in appropriate cases, decide that neither position is the preferable but that something should be done for the individual.

You have decision-making duties and before you can make any decision, you have to be informed. The process that hopefully I, Merike, Todd and others will do properly is to bring the information before you in the way we have prepared so you can make those informed decisions and you can ask those informed questions.

Mr. Callahan: A question was raised by Mr. Philip about reviewing the facts and reversing the decision of the Ombudsman. Somewhere in here--I cannot find it now--it says that one of the things we are not to do is to reverse or consider by way of appeal the consideration of the Ombudsman. I cannot find it.

Mr. Bell: I will find it for you because that is one of the things I have highlighted. We can talk about that function as we go on.

If there are no other questions, can I get into the substance of these selections from other reports?

Mr. Shymko: Do we have copies of the Ombudsman's recommendation as to the expansion of his mandate?

Mr. Bell: It is in his 10th report, but he also intends, when he appears before you first and formally on September 3, to table a statement. I understand it will contain in more specific terms what it is he is seeking. He intends now to raise it only for discussion purposes rather than for substantive purposes.

Mr. Shymko: I thought it might be important for all the new members of the committee to have a copy of that 10th report and the proposed recommendations for expanding his mandate.

Mr. Bell: Yes. I believe all the committee members do; if they do not, they should.

Before we leave tab 2, can I just refer you to certain excerpts from the fourth report of the committee?

By way of background, when Arthur Maloney took the job on in 1975, because he was the trial lawyer that he was, he quite rightly decided that to do a first-rate job of anything he had to find out what the heck an ombudsman was and what an ombudsman did. Notwithstanding some criticism, he took it upon himself with members of his staff to travel to an extraordinary number of jurisdictions in this world that had ombudsmen. He spoke first-hand to the ombudsmen, and in some cases to the representatives of the respective parliaments. He asked questions and was given guidance, advice and information on what an ombudsman is and should do.

He took that advice, etc., and used it substantially as the basis of the creation of his office. Unlike most of the other jurisdictions where ombudsmen were created, there was not an evolution or a development of the office. There was literally an instant Ombudsman office. Gilles Morin can tell you that because Gilles was there in the very early days. It was not a question of having five staff members in one month and then maybe in four or five months they had 15 staff members covering different departments. Literally, within days or weeks, they had an instant office. That was the source of the criticism.

Those of you who were here can recall that criticism. But Arthur said, "If I am going to do it, I am going to do it first-rate." He did it in a first-rate way and then he set about to do what he thought ombudsmen should do in a way that affected the Legislature and its members.

2:50 p.m.

Bear in mind that an ombudsman concept as of 1975 was totally foreign to members of the provincial Legislature, who had their own constituency responsibilities and, only recently, their own constituency offices. There was competition and jealousy.

The committee wrestled with the problem of that instant Office of the Ombudsman and the committee's and the Legislature's

relative ignorance of ombudsman matters for about two and a half years. In the latter part of 1977, the committee decided it would investigate for itself, not that it did not accept or believe everything Arthur Maloney, the first Ontario Ombudsman, and his staff said to it about what they did in other jurisdictions.

In early 1978, the committee travelled to Scandinavia, the cradle of ombudsmanship, and to England, Scotland and Israel. Israel has the most active and productive ombudsman operation. When the committee came back, it issued its fourth report which answered the question you see on the top of page IV, the first page in tab 2: "What is an ombudsman, and what does an ombudsman do?"

Let me refer you to some comments the committee made. They stand repeating today. On that page, the second full paragraph states:

"While the role of an ombudsman to the traditions, history and civilization of any particular country is curiously endemic, they all share a common objective: ultimately to serve the public, to hear complaints respecting the operation of the public service and, where appropriate, to take such steps as are available to them to remedy the consequences of a particular act or omission of that public service." All ombudsmen share a common function.

Later in the next paragraph, it states: "While it tends to be possibly the most personalized public office, still, without clear, unequivocal definitions and interpretations of ombudsmen's functions, relationships and objectives of the office, the ombudsman cannot and will not be effective, nor will parliament and the public service be able to develop the relationships and respect so necessary to assist the ombudsman in the successful operation of the office."

So, as you go through these nuts-and-bolts matters, you have to keep your eye on that and make sure you all have a clear understanding of what the roles and responsibilities are.

I can stop at this paragraph: "Apart from the need for a clarity of relationship, and probably more important than this, the committee learned that a deep personal respect is necessary to the functioning of the office, a sense which has not yet been developed in Ontario of the dignity and integrity of this office, which can only be engendered and maintained by a mutuality of understanding on the part of the Legislature and the government generally towards the office in the person of the Ombudsman."

The committee went on to talk about the situation that then existed. It said, simply, that we have lacked definitions and understanding and it was about time we had them.

A lot of things happened in 1978. They are probably more coincidental than related. The committee tabled that report. Shortly thereafter, although he had been planning it for some time, Arthur Maloney resigned in a way that focused the relationship between him and his office and this committee and the

assembly. As a result, there was some high-profile debate in the summer of 1978.

In the latter part of the year, Donald Morand, the second Ombudsman, was appointed. It was that period and those circumstances that focused on the function of the Ombudsman and his appropriate role and relationship to the Legislative Assembly. I commend that material to you for background and insight into how your predecessor committee struggled in the very early days.

Please turn to tab 1(a). I have included all this under the first term of reference, "To receive and to consider reports." We have already talked about the most important matter of that term of reference which is the recommendation-denied matter.

The first thing I have included is an excerpt from the fifth report. Please go to the bottom paragraph of page 2 of the material, which is page 95 of that report. The committee, up to its third and fourth reports, struggled to find its way in how it was to function fully and appropriately for the Legislature and the Ombudsman. There was criticism by the Ombudsman that the committee was dealing in too much detail with things or sticking its nose into places it did not belong or had no authority. There were also comments of a similar nature by colleagues in the House who thought: "What are you guys doing? It is a make-work project," etc.

Against that background, the committee said this: "The committee has consistently held the view that it could not fulfil its responsibility to the Legislature if, when considering reports of the Ombudsman, it did not review in detail the organization and operation of the Ombudsman's office. By doing so, and of necessity, a careful examination of how the Ombudsman and his staff performed Ombudsman functions in specific cases was undertaken. Where the committee was of the opinion that the Ombudsman or his staff did not comply with the requirements of the Ombudsman Act, it so stated and so reported to the Legislature."

Over the page, you set forth what you believe to be one of your responsibilities: "All those affected by Ombudsman functions are entitled to know what standard is expected of them by the Ombudsman. Likewise, the Ombudsman and his office are entitled to know what standard will be expected of them in the performance of their duties under the Ombudsman Act."

"To require any lesser standard of performance of the Ombudsman and his office than that of a governmental organization is contrary to the committee's view of the concept of an Ombudsman in our system of government. In fact, the standard of performance of the Ombudsman's office should be higher."

Historically, when you have considered these cases that have come before you or various subject matters or issues that the Ombudsman has referred to you, you are demanding of the Ombudsman and his office. Gilles may or may not wish to tell you, but there has been a good deal of preoccupation by the Ombudsman and his office to meet that so-called expected standard. In many cases, you have been demanding to the point of frustration to the

Ombudsman's office; in other cases, you have been demanding to the point of glee.

What you have said is: If an office has been created of such a high standard as it has, and if it is going to expect and require a certain standard of performance by the governmental organization, you are going to require no less than the same standard of performance. That is one of the reasons you have three volumes of material. It is so you have insights available as to how they have conducted their investigations and formulated their opinions and worded their recommendations.

3 p.m.

For example, not two years ago, the Ombudsman was taken to task for the way he had framed and phrased his recommendations. They were ambiguous and in many cases the governmental organization and this committee did not have a true appreciation of what was intended. This committee told the Ombudsman as late as two reports ago, "You had better make it clear because if you do not, you are at risk of not having the thing supported at all."

Mr. Philip: Another example of this same principle was the fact that the Ombudsman did not have a grievance procedure in his own office for his own staff--

Mr. Bell: You will see in the 10th report that he now has a grievance procedure.

Mr. Philip: --and was violating the Manual of Administration.

Mr. Bell: Again, these are insights for you. You will catch up very rapidly when you gain an understanding of the level of expectation this committee has had historically.

I think the next paragraph is worth while reading, as well, before we move on:

"This committee is of the opinion that the most effective Ombudsman is one who performs the required functions under the Ombudsman Act on behalf of the people of Ontario, in total compliance with the legislation and without ambiguity or uncertainty surrounding the meaning and intent of the Ombudsman's opinions and recommendations. The committee perceives its function on a continuous basis to assist the Ombudsman and staff to attain and maintain that high level of performance by discussing with them areas where improvement may be in order."

Where we see areas that require improvement, we do not hesitate to raise them. You have not hesitated in the past. The only difference between this committee and previous committees is one word. As I said before, it is a distinction without a difference as far as your functions.

Mr. Callahan: It is related, but I would like to return to the act. As I understand the procedure, first, the Ombudsman can send a copy of his report to the Premier. You said if the

Premier decides that as a matter of policy he does not wish to respond, and it is a majority government, section 23(1) seems to be meaningless.

Mr. Bell: No, because the Premier cannot stop the process.

Mr. Callahan: Yes, but if the process then goes to the Legislature, quite obviously the Legislature is going to follow the mood of the Premier.

Mr. Bell: I can tell you it has never happened that way.

Mr. Callahan: Is that right?

Mr. Bell: When we started about an hour ago, I said one of the characteristics of this committee, historically, is that it has been nonpartisan.

Mr. Callahan: I just asked the question because it seems to me that the act is a eunuch really.

Mr. Bell: In a majority or minority government or in any government wherein the Ombudsman does not have the confidence of the Legislature, one could read that legislation in such a way as to neutralize the Ombudsman's effectiveness. You are quite right. It is designed in such a way that if the Premier's office wished to become involved, it would involve itself and perhaps set forth an expression of opinion on how things should be dealt with. To Premier Davis's credit, he did not on any occasion involve himself or his office in a way that sent a message across, at least on the face of the matter. In any event, even if it had been done behind closed doors, this committee has operated almost totally on a nonpartisan basis.

I have seen some lineups of votes here involving caucuses and individuals that could not be repeated anywhere else outside this room. I believe it is because the members who serve on this committee recognize that an Ombudsman, to be a truly effective instrument, must not be associated with any element of partisan politics and, wherever possible, issues are to be dealt with on their merits rather than whether or not it protects a deputy minister or a director of operations in some ministry.

I have seen government members criticize heads of agencies or departments here just as rigorously as have opposition members, and you will probably see it--

Mr. Callahan: That is in committee, but when it gets to the--

Mr. Bell: To the assembly?

Mr. Callahan: --to the assembly--

Mr. Bell: We are jumping ahead, but let us touch upon it now.

Mr. Shymko: That is when you get vetoes.

Mr. Bell: The first four reports of the committee, with the exception of the first, were debated in the House. The debates were a waste of time. Nobody showed up. The only people on their feet, probably the only people present other than the Speaker, were the committee members.

Then came this committee's sixth report. If you ever get a copy of the sixth report, you will see there is a paragraph on the front cover lined in black. This committee, after reviewing what had happened to its previous reports, said as a bottom line: "Legislature, you have a choice. Either you continue to do what you have done and pay lip service to these reports and to what the committee has done, spending long hours and a lot of money to assist you--if you do that, by the way, the Ombudsman is going to fade away into the night. There is not going to be an Ombudsman and there is not going to be a committee--or, Legislature, you can start getting serious with your debates. The ministers who are responsible for the governmental organizations can be in the House and respond to the committee's report, and there can be participation by government members beyond only the committee members. If you do not do that, as I have said, you are going to fade away into the night."

When that report was debated, and this happened during a majority government, each of the ministers who had responsibility to respond were there and did respond. It was a good debate, and the Legislature adopted the recommendations of the select committee. Historians around here tell me that was only the second time that a legislative select committee report with recommendations had ever been adopted by the House. The first one was a report of the standing committee on members' services, and it had to do with the menu of the legislative diningroom, so it is understandable that would be adopted because that is an important function. Thereafter, from the sixth report to the 12th report, this committee's recommendations have been adopted by the Legislature. You will not find any other committees with reports and recommendations where that is true.

Mr. Shymko: I think it is because we address gut issues.

Mr. Bell: That is right, and you will see reference in the material. There has been a debate between this committee and the Attorney General, for example, on what the effect of the House adopting this report is. This committee likes to believe that it has some force of law. The Attorney General says it is no more than a resolution, which is an expression of intent. However, what it is is not relevant; what is relevant and important is that once the House adopts this committee's recommendations, the governmental organizations affected immediately implement them, if they have not done so already. They do not take a chance that, in the expression of the House, it will be flouted in some way.

Your point is a good one. You can read the act and you can actually set up that act in a way to flout the Ombudsman's function. It just has not happened, and it would be quite risky for anybody to try and start to do it now. There is a great record of

things that have happened in the past that can be compared to a change in policy that way.

We are back to (a). Do you want to break for a while, or would you prefer I just keep on going?

Mr. Shymko: I just want to know, Mr. Chairman, whether we will wreck counsel's holidays by starting our deliberations at the beginning of September. My understanding was that he needed at least two months to prepare his briefing notes.

Mr. Bell: Mr. Shymko, I am on my holidays right now.

Mr. Philip: That means we are not going to be charged for today?

Mr. Bell: No. It means you are going to be charged double. Yes, you are going to be charged for today.

Mr. Sheppard: We should go down to the Trent River. That is a good place to have a meeting. Have you got that new house built yet?

Mr. Philip: Not yet. The structure is up. The roof is going on this week.

3:10 p.m.

Mr. Bell: Can I refer you to the bottom of page 4 and over on page 5 of this material? Those are pages 97 and 98 of the fifth report of the select committee.

These pages are arguably some of the three most important pages the committee has ever written. They arose out of dealings with the Workers' Compensation Board which was then the Workmen's Compensation Board. The bottom of page 4 of this material, page 97 of the fifth report, says:

"The committee was invited to articulate what it perceived its role to be in the context of a recommendation reported by the Ombudsman to the Legislature which has been denied by a governmental organization." So here it is. What are you supposed to do on 75 per cent of your work-load cases? Here is what you said:

"The committee should set out for the benefit of all governmental organizations and the Ombudsman what it perceives to be the appropriate manner of proceeding in the consideration of such a complaint before coming to a decision as to whether the Ombudsman's recommendation can be supported." You refer to your third report. You say that when circumstances warrant, you will "give full support to a recommendation made by the Ombudsman and rejected by a governmental organization. However, the committee in those situations will require that the Ombudsman has, in every respect, carried out the necessary provisions of the statute. To do less would be to expose the Ombudsman to criticism and might undermine the confidence..."

You have said as early as your third report that you will try to support the Ombudsman's position, but you are going to be demanding in the standard of the performance that you expect. Here is what you say:

"The committee will review with the Office of the Ombudsman all phases of the Ombudsman's functions which were exercised in the particular complaint. It will also examine with the governmental organization in question the adequacy and appropriateness of its response." Those two words are important because, remember, they are in subsection 22(4) of the Ombudsman Act.

"If that response has been less than complete and if the exchange between the Ombudsman and the governmental organization contemplated by section 22 of the Ombudsman Act has been less than thorough, the committee will inquire into as much detail as it considers necessary in the circumstances." In other words, where a governmental organization has not done its job, you are going to dive in and do yours.

"When it appears to the committee the Ombudsman has complied with the provisions of the legislation and where the governmental organization's response is not adequate, appropriate or reasonable to the committee, it will prima facie support the Ombudsman's recommendation." That is key. In other words, where you satisfy yourself that the Ombudsman has done his job in his investigation, report and opinions, etc., and where you are satisfied that the governmental organization is not adequate, appropriate or reasonable or just is not a right one, then prima facie the Ombudsman's position is the one that is supported.

In other words, at that stage it is a show-cause situation for the governmental organization. It had better show cause as to why it is not doing it because the committee intends to support the position, unless some quite important issues have been raised that we have not heard about. Then you go on to say:

"When the Ombudsman was created in Ontario, the Legislature intended that a vehicle for the scrutiny of decisions of the public service would ultimately press the Legislature to redress the consequences of certain decisions considered by him to be warranted..." In other words, when the Ombudsman was created, the Legislature did intend that there would be times when the Ombudsman would be seeking the help of the House.

"If the committee chose not to support a recommendation of the Ombudsman after it had satisfied itself as set out above, it would seriously undermine the effectiveness and credibility of the Ombudsman in the eyes of the people of Ontario..." etc. "If governmental organizations wish to persuade the Ombudsman and the Legislature that their response to a recommendation is adequate and appropriate, they should do so at the level of exchanges..." and so on.

As I say, that is probably the most salient statement ever made by your predecessors about what you take to your consideration of these reports.

Now to turn to page 7. What I have set out for you on pages 7, 8 and 9 is the background of the committee's comments after the Legislature, for the first time, by its debate and adoption of the sixth report, adopted your recommendation that a particular Ombudsman recommendation be accepted and implemented.

Again let me just take you back. Remember, the Ombudsman does not have any teeth in his legislation. He cannot require anybody to do something. All he can do, if he has exhausted his process unsuccessfully, is to go to the Legislature in the form of this committee and seek help and say quite simply: "This is what I have done. I think I am right. I want your assistance in having this recommendation implemented."

In the way you have done before, you do your job. If you have come to the conclusion that the Ombudsman is right and his recommendation should be implemented, you say so to the House in the form of a recommendation. If the House, as it did with the sixth report, agrees with you and adopts your report with that recommendation, you have created an obligation on that governmental organization on behalf of the Ombudsman which he does not have in his legislation. The academics call it the Ombudsman's "ultimate sanction." His ultimate sanction is to seek the assistance of his boss, the Legislature.

That is the background. I do not mean to be melodramatic or maudlin but that is the level of the importance of this office. With every one of these cases you are potentially asking the Legislature to act in such a way as to create an obligation on people to act in a manner that supports the Ombudsman's position. In any event, at page 8, after referencing that the Legislature's act in June 1979 adopting the report was the first time that this matter was done, you say in the second paragraph:

"The Legislature has now demonstrated to the Ombudsman, the governmental organizations under his jurisdiction and to the people of the province of Ontario, that in the appropriate circumstances the Legislative Assembly of the province of Ontario will do everything within its competence to see that the Ombudsman's recommendations are implemented."

Your work does not die in Orders and Notices. It does not waste away and you do not leave the work to go on to other things in the next year. There can be no better demonstration of how ongoing your work is. The next paragraph is worth reading:

"At the same time the committee is mindful that the debate and consideration of its sixth report on June 21, 1979, dealt more with expressions of support for the committee's recommendations and the concept of Ombudsman rather than dealing in detail with the substantive issues raised by the recommendations. The committee realizes the great burden and responsibility this places upon it during its deliberations wherein legislative support is sought by the Ombudsman for one or more of his recommendations.

"The committee wishes to assure the Legislature that it will continue to investigate exhaustively and review all aspects of Ombudsman reports before reporting thereon to the Legislature,

particularly on matters of Ombudsman recommendations. This process will ensure that the Legislature, through this committee, before effectively approving and adopting a recommendation of the Ombudsman will have fully investigated, examined and thoroughly reported upon all relevant and appropriate issues."

In other words, it is a two-way street when you ask the House to support your recommendations and adopt them. You want the House to exert its influence that way, but the very great burden it places upon you, as with all committees of the Legislature, is that the House is entitled to presume that you have done your work quite exhaustively.

In these committee hearings you will crawl up and down every Ombudsman issue that needs to be reported upon in as much detail as necessary, so when the House receives one of your recommendations and one of your opinions, it will have the confidence that you have done a very thorough job before formulating those opinions and recommendations. That is the standard that has been imposed or that you have imposed on yourselves or your predecessors have imposed on themselves in doing this work.

3:20 p.m.

The rest of the material in this section is more repetitive than new. I commend it to you to read at your convenience. If you go through it at least once before September 3, you will be extremely well-equipped to deal with the issues on the agenda.

Before we go on to the general rules, can I give you a description of how you function on these recommendation-denied cases? Again, I have to go back historically to put it in the appropriate context.

Historically, committees of the Legislature have been fact finding in nature and set up to study in the detail the House does not have the time or resources for any particular or general issues. In most cases the committees will study bills after the first and second reading. Then a clause-by-clause analysis will satisfy the democratic process but will also give the House more information on all aspects of the legislation.

Other committees such as the standing committee on resources development, for example, are given policy matters to review for reporting back to the Legislature when legislation is being considered. The most notable example of that in the history of this House was the select committee on company law which after 1966 was converted to a standing committee. That originally was the Lawrence committee and was initially given the term of reference to study company law in Ontario. Its work substantially contributed to the Business Corporations Act passed in the early 1970s.

About 15 years ago, committees started to take on different functions, such as the function of inquiry on specific nonlegislative issues. The reason probably was borrowed from the United States whose Senate and congressional committees conducted

themselves more like royal commissions of inquiry than they did like commissions or committees of legislative bodies.

In 1972, the first committee of its type was struck. It inquired into the affairs of the Workmen's Compensation Board, as it was then called. There were findings of conflict of interest and benefits conferred on certain senior workmen's compensation officials. That was followed by the select committee that inquired into Ontario Hydro and the letting of the contract for its head office to Canada Square. That committee functioned for six months and was more like a commission of inquiry.

That was my introduction to the legislative process. I was assistant counsel to my partner Dick Shibley on that committee, which was served by legal counsel as in a trial or commission of inquiry. He led the questions, interviewed the witnesses and marshalled all the evidence.

There have been other committees that have performed similar functions. The most recent one inquired into the Ontario Hydro contracts vis-à-vis certain component parts of its nuclear power stations and certain tubes and tubing that was cracked to the tune of \$400 million. Those committees had special fact-finding functions.

All of that is background to the time wherein the Ombudsman was introduced to the scene. From the beginning, this committee has never functioned as most committees do. For one thing, it has had a legal counsel who has been involved substantially in the background preparation, the organization and marshalling of evidence and in the presentation of the evidence during the committee's hearings. Historically, I have been the one to lead off the questions and the questioning of witnesses or people who appear before you on each of these various cases. When I have completed my basic questioning, each of you ideally will have enough background and information to question on your own as to matters that are appropriate. That is how this committee has functioned in the past.

Because it is an us-or-them situation, the Ombudsman, from his side, comes forward to say: "This is what I have done. This is my position, I want it supported." That is to be weighed against the governmental organization saying, "Notwithstanding what they have said or done, we do not think it is appropriate or we cannot do this for these reasons." You have to choose. That is similar to the adversarial process of a court of law or administrative tribunal, so that your committee hearings function in many ways like a hearing of an administrative tribunal or a hearing of an issue in a court of law or otherwise where people or persons hearing the issue have to make decisions.

What happens is, on each of the recommendation-denied cases, you will be hearing from the Ombudsman and appropriate members of his staff. They will be putting their case forward in the best possible light. They will be highlighting for you the facts that they consider most relevant and most important to assist in the support of their position. You will be hearing likewise from the governmental organization on the other side.

It is my job, and implicitly your job, to get as a matter of record as many facts, relevant and otherwise, as you need to make the decision you have to make, whether or not to support the Ombudsman's recommendation, and whether to recommend to the Legislature that his position be preferred. You will be wearing two hats really. You will be wearing the hat of an examiner of persons on different issues and points of view. Then you will be wearing the hat of a decision-maker; based on what you have heard or read, one or other of the sides is to be preferred.

You will get a better idea of that after the next day and a half when you go through the briefing session with the Ombudsman. He will be spending some time on his so-called recommendation functions. When you read the committee's last report, which is set forth in tab 5, the 12th report, and you see how the committee has reported on these recommendation-denied cases, you will get a better flavour of what I have just said.

As you will see, starting the afternoon of September 3, when the Ombudsman appears before you and the Ministry of Consumer and Commercial Relations and the Ministry of Housing on the first recommendation-denied case you will hear, you will have me start off introducing the issues and introducing the parties and by introduction raising certain preliminary questions. This will be followed by each one of you as you are so advised of the Ombudsman and his representatives. This will be followed by a similar format of questioning of the governmental organization. The format is generally informal, but the procedures are relatively standard. Does anybody have any questions on that?

3:30 p.m.

Mr. Henderson: Following what you have just described, I presume the parties on either side believe there is an opportunity for discussion among members of the committee. Is that how it goes?

Mr. Bell: That is a good point. Up to two sessions ago, the committee would not reach a decision on any one of these cases until it had finished all its work. Then, when it deliberated on its report, it dealt with each one individually.

Because of the time frames involved--theoretically it takes six to eight months after the committee's work for the report to be debated and adopted in the House--we developed a procedure to save time and get governmental organizations to work faster. I believe we should continue it, even though our schedule is tight. After each recommendation-denied case is completed by you, the parties are asked to retire for half an hour at most. During that time, the committee sees if it has some unanimity on a result.

Let us take an example. Say after the first one was finished the parties left and we went into private session, and the first poll said, "unanimously supporting the recommendation of the Ombudsman." We would call the parties back and announce the committee's decision, and because it was to recommend support for the Ombudsman's position to the House, we would be, in effect and specifically, telling the governmental organization: "From this day you have a responsibility to implement that. Please go and do

it, and tell us you have done it before we finish our work."

The first time it was tried, two sessions ago, quite remarkably, when we got to the Workers' Compensation Board cases, it came back to the committee on two of them before the committee had finished its work, to say, "We will implement them." It was like an instant rather than delayed result.

Mr. Henderson: Just to understand the process, am I right in understanding that, theoretically at least, they could say, "That may be your recommendation, but it does not have any status until it is accepted by the House," and then there could be something not carried out, depending on which way it went?

Mr. Bell: Exactly. That board in particular has tried that, and when Bob Elgie was minister he frowned upon that position and practice. It ended up with the then chairman appearing before this committee to say any recommendation it made would receive approval and be implemented regardless of whether it was debated in the House.

The members of that board now say, "We consider it appropriate for us to wait upon the House to adopt or not adopt a recommendation before we act," but the majority of ministries and governmental organizations that appear before this committee do not play that game. They have enough respect for the process that, if this committee recommends, chances are quite good it will be adopted by the House, so it goes forward. I expect that is the attitude you will encounter from governmental organizations this time around.

Mr. Philip: The Workers' Compensation Board tends to be a bit more difficult.

Mr. Bell: It is unique in many ways, particularly because of the volume of complaints. Of 19 recommendation-denied cases you are going to be looking at, 11 are from the Workers' Compensation Board, so those of you who have not been here before are going to have a crash course in workers' compensation issues, representatives and methods.

Mr. Shymko: On September 12, I guess we will be deliberating on the amendments to the Ombudsman Act. I have not gone through the details of some of the suggestions, some of the general propositions that have been made. I have been reading them in the media. However, it may require such elements as expanding the Ombudsman's jurisdiction to include municipal government, etc. It may require some caucusing before we make any comments, probably by all three parties.

On September 12, will we be looking at the possibilities of some of these expansions, at the recommendations from the Office of the Ombudsman as presented in his last report? I am sure you will not be seeking any decision from this committee on September 12.

Mr. Bell: I think the discussion about amendments is going to be relatively brief. You should raise the matter with the

Ombudsman as early as tomorrow and the next day when you discuss it with him informally.

They have a bill before the Attorney General (Mr. Scott) now, as you know. The former Attorney General, Roy McMurtry, promised this committee and the Ombudsman that an amending bill was going to be tabled in last spring's session. Events intervened and the bill was not tabled and it is currently before the new Attorney General. The ministry is considering as a matter of policy whether and to what extent recommended amendments are going to be implemented.

You will hear from the Ombudsman and his staff that they have recently had discussions with the Ministry of the Attorney General which are most encouraging. They would like to let those discussions take their course before getting into the nitty-gritty with this committee.

It should be remembered this committee recommended that, as and when the Ombudsman bill is tabled in the Legislature, it should be referred to this committee for clause-by-clause review rather than to the standing committee on the administration of justice. I think that is how it is going to happen. The Deputy Attorney General is going to appear before you this September. He is already aware of, and wishes to discuss, the matter of the amendments with this committee.

I think that would be the level of the discussion, to report on what has gone on to date in general terms as to what their timing is if they have a schedule. I would like to have the deputy reaffirm as best he can a commitment to refer it to this committee rather than to the justice committee.

Mr. Shymko: Would there be a possibility of having that commitment restated by the present Attorney General?

Mr. Bell: I think we should ask for it; whether it is given is another matter.

Mr. Pierce: You indicated we would be given copies of the cases prior to deliberation on them. Is there any indication how soon we will get those copies?

Interjection: It will be about a couple of weeks yet.

Mr. Pierce: Will they be in summary form or will there be the complete context?

Mr. Bell: There is going to be the actual documentation that was created between the Ombudsman and the governmental organization as part of the investigative and reporting function. You are going to see investigative reports and final reports. In addition, as with all 19 cases, I hope you will have at the beginning of each section a statement of facts agreed to between the Ombudsman's office and the governmental organization as to what the issues of the case are, what the relevant facts are, what the Ombudsman's opinions and analyses of those opinions are, what his recommendations are and what the governmental organization's position is.

3:40 p.m.

We tried this for the first time last year and it worked with great success. Within three or four pages, anybody could be sufficiently briefed on the issues to have a grasp of them and to participate immediately in the questioning. That process, the agreed statement of fact, accomplished other things as well. It brought the Ombudsman and the governmental organization together one more time at a stage when an appearance before this committee was imminent. That sometimes has various effects. At least it gets everybody thinking in precise terms what the heck the matter is all about.

Mr. Philip: It resolved a number of cases.

Mr. Bell: It served to resolve a number. Years ago when we first started to deal with these recommendation-denied cases, the Ombudsman would come and make his pitch, sometimes in a manner that did not bear a resemblance to his report, and the governmental organization would come and start asking all sorts of questions that had never been asked before about issues that had never been thought about before. The whole thing was chaotic.

Someone has just told me case 4 in your binder has already been resolved, so strike one off the list. I have also been told there is a hope that some others will be resolved. We will just have to take inventory of what is left on the morning of September 3. I would be amazed if we have 18 left.

Mr. Baetz: You have touched on one aspect of my question. Having sat on the other side of the fence and represented the governmental organizations, I get the impression that the vast majority of cases never do come to this committee. Can you give me a percentage?

Mr. Bell: This is the absolute tip of the iceberg. You have to do it in a funny way because, if you take a general average of the length of time those 19 cases were in the Ombudsman's office, it is between two and three years. To do a meaningful statistic, you have to take the number of complaints they received in three years and compare it to the number of recommendation-denied cases in three years. If you do that, you are probably talking about them having received 30,000 complaints within three years and referring to you within three years a maximum of 40 to 50 recommendation-denied cases.

Tomorrow they will tell you very quickly the majority of their work is done in a relatively short time. Someone picks up the phone and says, "My workers' compensation benefit cheque is three weeks late and I cannot get any satisfaction down at the board." Someone from the Ombudsman's office will call the board and, lo and behold, the cheque has been located and/or delivered. That might have taken two hours and that will be one of their complaints.

On the other hand, the way of looking at it when you talk about this ultimate sanction is that potentially any one of those 30,000 cases could come this route to the committee. I like to

believe, however effective the Ombudsman is in this province, in part it is because of the knowledge of the governmental organizations that any one case might go the so-called route.

Everyone is human. If I were in the situation, and probably all of you feel the same, if you can avoid having your conduct scrutinized by a committee of the Legislature and by the Legislature, you might tend to avoid it.

Mr. Callahan: Just so I can understand the process, I am sure all of you get the same thing I get, that is, floods of calls in my constituency office and upstairs on Workers' Compensation Board claims. We usually try to resolve them by getting the file out and taking the appropriate steps. Are these cases in which that has already happened, or is this a case where the member has simply said: "I do not handle WCB cases. Go to the Ombudsman"?

Mr. Bell: It can be either. Somewhere in this material you are going to see a discussion by the committee in the very early stages that the Ombudsman's function is parallel to the member's function, at least as far as his constituency work is concerned. In the British system of parliamentary democracy, a member is an Ombudsman for each of his constituents. That is the way matters are carried out.

For workers' compensation, for example, some members, rather than refer a workers' compensation case to the Ombudsman, prefer to do it on their own. They believe they can do it more effectively.

Mr. Callahan: More quickly too, I would think.

Mr. Bell: It depends on the member. Others, without naming any names, will automatically refer all the Workers' Compensation Board matters to the Ombudsman in the belief that the Ombudsman deals with them more effectively. It is really a matter of style.

Mr. Philip: I thought the Ombudsman only had jurisdiction at level 3 of appeals.

Mr. Bell: That is the other thing as well.

Mr. Philip: So if you send someone to the Ombudsman when they walk into your office, and they have not even been to an adjudicator, they will be sent back to you.

Mr. Bell: As you go through the decision-making process, the Ombudsman will only take on an investigation after the appeal process is exhausted.

Mr. Shymko: After all appeals have been exhausted.

Mr. Bell: What I was thinking of was that members take on a lot of matters for the Workers' Compensation Board and they may deal with those. They do not necessarily deal with the adjudicative process. Members get complaints on late or lost cheques, and probably deal with them the same way the Ombudsman

does.

As you get into this work, you will see that a lot of the things the Ombudsman does are parallel to a lot of the things you do. You will see some comments by the committee, recognizing that those roles are parallel, expressing that we should work together as much as we can and wherever we can. The Ombudsman will tell you in the next day and a half--and Gilles can tell you from his perspective--that when a case has been referred to the Ombudsman from a member, the member, with the consent of the complainant, is kept regularly and continuously informed of the progress of that complaint and is involved in every way.

Historically the opposition members probably refer more to the Ombudsman than do the government members, for whatever reason.

Mr. Morin: One of the main reasons the Ombudsman's office, even after 10 years, is still not well known enough is that if members of Parliament knew the Office of the Ombudsman thoroughly, half of their job would be done by that office. That is my perspective anyway.

Mr. Bell: I think there is a lot to that.

Interjection: It is true.

Mr. Morin: With the equipment and the referral system they have.

Interjection.

Mr. Morin: As a member of Parliament, you want to get that glory, but on the other hand, if you were intelligent enough to pass them on to the Ombudsman--

Mr. Bell: Probably within 15 minutes of that visit, one of the feelings you are going to experience tomorrow, those of you who have never been exposed to the Ombudsman's office and operation before, is one of envy and jealousy. I know you will all resist it in an appropriate way, but you will--

Mr. Callahan: Are the carpets deeper or what?

Mr. Bell: No. They--

Mr. Philip: Even their food is better.

Mr. Bell: They have a first-rate operation. They are as mechanized and as computerized and as word-processorized as one can be. It is because of the type of operation that was created 10 years ago. It has developed and it has grown. Gilles is right in that the office could be even more effective than it is now if it was better known and better utilized, not by members, but by the public generally.

Mr. Newman: Would it not be the responsibility of the Ombudsman to inform?

Mr. Morin: He does.

Mr. Newman: More so.

Mr. Morin: He does. In my experience the perception I receive is that the public uses the office only when it affects them. You can feed them information, but if it does not affect them they will not need it. It is only realized when they go to the member of Parliament and say: "I have a complaint against the Workers' Compensation Board. I have followed the three appeals, and I have still not been successful. Can you do anything for me?" The member will say: "No, but I know someone who can. Possibly it will do its best to come to your aid."

3:50 p.m.

Mr Callahan: You say they have all this machinery and equipment, and maybe I should wait until tomorrow to ask this question, but is there some sort of computer process that links a lot of these together and, as a result, something the WCB does on a consistent basis is eliminated?

Mr. Bell: Yes. The effect of it is like using precedent or--

Mr. Philip: This is the first Ombudsman who has really analysed the systemic problems.

Mr. Bell: In his report, dealing with the Workers' Compensation Board, he mentions certain systemic problems. What he is getting at is, "I think this is symptomatic of something within the board and if it was eliminated, we would save a lot of complaints." He does it, probably not in the highly-organized way that you have asked about, but it is there and it is done.

Mr. Philip: For the first time.

Mr. Bell: They have an ability, I believe, to cross-reference new complaints received with other complaints resolved. That is a good question to ask them, because if they are not precisely doing that they should be and it would save reinvestigation.

Mr. Callahan: That is right. It would seem to me it would save a lot of the cases that are referred to the Ombudsman and maybe create policy that might allow the Legislature or this committee to--I do not know whether it is within our purview--to recommend the restructuring of a particular board to eliminate that problem.

Mr. Bell: That has been tried.

Mr. Baetz: That is always the basis of some tension between the two bodies. It is human nature that if somebody else has identified a weakness in your structure, there are people who do not like to hear you say that.

Mr. Callahan: It would seem to me that would make the

Ombudsman's committee very much more effective.

Mr. Baetz: Sure.

Mr. Philip: I was just going to comment that it is interesting that British Columbia's Ombudsman had been doing that for years, over and over again. Particularly with the last acting Ombudsman, who either would not or did not want to understand, or did not want to look at the problems. I do not know what it was, he absolutely refused to look at systemic problems. Indeed, it was fairly well known that he did not particularly like the British Columbia Ombudsman, or some of the high standards that were being set in British Columbia. He had such high standards, that he is not being reappointed.

What is interesting though is that Sidney Linden, here in Ontario, as the Metropolitan Toronto Police complaints commissioner, was developing some analyses of systemic problems in the last few years.

Mr. Bell: Too bad he is leaving.

Mr. Philip: If you walk into Mr. Linden's office, you can even see patterns mapped of where complaints come from. He meets regularly with the chief of police, or at least he did, and said, "Here is the area that we have to look at and find out what is going on that is creating this pattern."

Mr. Bell: Theoretically every recommendation the Ombudsman makes should be on two levels. As we go back into other parts of reports that I have not referenced, when this committee deals with these recommendations, they approach it from two levels; (1) Does it relieve against the immediate complaint, and, (2) Does it address a matter of general circumstance so that, if corrected, it will avoid the repetition of many other complaints. In other words, will it save on work load.

In general terms, there has been that result. I cannot think of a government organization that has been back here a second time because they have repeated something which has been dealt with against their interest previously.

Mr. Callahan: There should be a penalty in costs made.

Mr. Bell: That has been considered, too.

Mr. Shymko: Mr. Chairman, do you recall the figure for the volume of nonjurisdictional cases of complaints that flow into the Ombudsman's office which the Ombudsman does not deal with, per se. Is it 60 per cent of incoming cases are federal jurisdiction, or something?

Mr. Bell: I still think that in excess of 50 per cent of the matters that are directed to his office are outside of his statutory jurisdiction. I do not know whether the question has been asked recently, but it would be interesting to know what percentage of manpower utilization is expended on those matters. That has been one of the longest-standing discussions.

Interjection.

Mr. Shymko: We never did get an answer on that.

Mr. Bell: Do you know what it is? On the question of dollars and cents, there is the position, "We want to get value for our Ontario dollar. We do not want you doing things that are outside of your jurisdiction."

Gilles can give you the Ombudsman's reasoning on why they do deal in the depth that they do on nonjurisdictional cases more eloquently than I. I guess the bottom line is it is a commitment that nobody should be sent away without something done, because all of those people who come are citizens of Ontario. If it is no more than a referral letter specifying the appropriate federal or municipal agency, at least they have done something. It costs money to print that letter, let us face it.

Mr. Callahan: That is not what the federal members do with the provincial members. I get a form letter from my member of Parliament saying it is a provincial matter, take it and cure it.

Mr. Morin: If you followed the act to the letter, you do not have to answer these people.

Mr. Bell: That is right. All you have to say is, "I am sorry, it is not my job." All three of the Ombudsmen in this province have said, "We feel a commitment to do more than that." In fairness, I think this committee and the Legislature have generally endorsed that, but with this caveat, "It better not get out of hand or get too costly or maybe we will have some more rules."

Mr. Baetz: Speaking of jurisdictions, mandates and so on, and keeping in mind that effective April 1 we have had the Charter of Rights and Freedoms, what impact do you foresee that will have, negatively and positively, on the work of the Ombudsman or on the work of this committee? Will it have any at all? In some respects there is a new ball game there.

Mr. Callahan: I would think it will be significant.

Mr. Baetz: I am just trying in my own mind to sort it out.

Mr. Bell: I believe it will have this impact--it will give the Ombudsman another arrow in his quiver to formulate an opinion that something, bottom line, was wrong. He now has, if you use the language of section 15, the opportunity to say the person was not given equal treatment under the law or did not receive equal benefit from that law. Bearing in mind it would have to be for a decision only after April 1, 1985, he can say that, "Relying upon the charter, I am going to make a recommendation."

I think the impact will be that it will give the Ombudsman another means of formulating conclusions. Whether there is anything in that Charter of Rights and Freedoms that puts the

Ombudsman or anything that the Ombudsman does now at risk, I do not know and I do not like to speculate. There are some things in that process where he has to give notification to people at some stage in his report where he may make comments or recommendations adverse to their interest. It may be that somebody could attack him based on the Charter if he leaves them out, but they can go at him now on the doctrine of administrative fairness.

Mr. Callahan: Yes, but would the person seeking the redress from the Ombudsman have a problem in that, if there was a charter argument available, that leaves one further process that has to be taken before they could come to the Ombudsman?

Mr. Bell: That is another issue--whether or not the Ombudsman only deals with things after the courts have finished with them.

One thing that we have not asked Dr. Hill, since he has been appointed, is to restate his position on involving himself in matters wherein matters are pending before the courts.

Mr. Callahan: Just recently there was a decision where by notice of motion you were able to bring a matter before the Supreme Court on the basis of whether or not it offended the Charter. That would seem to be a process that is available now to anyone and thereby deprives the Ombudsman on a jurisdictional basis from even considering it.

Mr. Baetz: This is exactly the question that is sticking in the back of my mind. Will I have to automatically rule a case out then and have to say, "In the light of the new Charter of Rights, it is beyond my jurisdiction."

4 p.m.

Mr. Bell: Where there has been any matter pending before the court, the Ombudsman has tended to stay away from it, using the sub judice rule the House uses. There have been some circumstances where they have involved themselves, but on issues which they say are not relevant to the court. On the specific case that you put though, where somebody attacks legislation or some matter of government citing the Charter, I think the Ombudsman would be very hard pressed to justify a parallel concurrent investigation on his part on the very same issue.

Mr. Callahan: Clause 15(4)(a) would seem to preclude it.

Mr. Bell: In examples I can think of, not on Charter but on other issues, he has backed away. It remains to be seen how extensively he will be affected in the two ways we have discussed.

I do not know what more you want to do. You can read as well as I, probably better. The rest of tabs 3 and 4, deal with two very important areas by the way. The role and relationship of this commission with the Ombudsman are dealt with in 3, and you will see, going back, right from the second report onwards, there has been a general expression of support for the Ombudsman and his operation.

There have been differences between the committee and the Ombudsman. If you go to tab 3, for example, pages 3 through 6 set forth probably the most difficult time in the relationship between the committee and the Ombudsman. This was when Arthur Maloney challenged the committee's jurisdiction on a matter involving the privilege of a member, Pat Reid, and in challenging the committee he and his staff got up and walked out of the committee's hearings.

At pages 5 and 6, you will see what the committee said about it. They called it specifically, at the bottom of page 5, "an ill-advised act displaying an unfortunate attitude and a misunderstanding of the role of this committee and its obligation to report to the assembly." It again had some words about what it believed the true and appropriate relationship should be, one of mutual understanding and respect, and not on an adversarial word-game basis.

That was the low point in the relationship. There has been another similar, but not as serious, incident involving Mr. Morand and his reluctance to disclose certain matters dealing with his estimates and the staff of his office that caused the committee, about three reports ago, to repeat this phrase about ill-advised acts.

Dr. Hill is different. Dr. Hill has told everybody on this committee that he intends to conduct the affairs of the office in a way similar to that in which he conducted the affairs of the Human Rights Commission when he was its chairman. I think the two touch words are "mediation" and "conciliation." There is a perceptible change in style with Dr. Hill as compared to the previous two Ombudsmen, probably because the last two were lawyers and they were used to the adversarial system. Dr. Hill is more comfortable with another system.

I think there will be no incidents in the foreseeable future where we are clashing. Gilles is smiling. Gilles has been on the other side of the fence too, but in a different context.

Mr. Shymko: If I may add, because of the frustrations of not getting some of these recommendation-denied cases across--even when the intervention came by the select committee on the Ombudsman reporting to the assembly, there was never any real clout to implement some of his recommendations--there has always been a temptation on the part of the Ombudsman to seek a more public forum to voice these frustrations.

Some may go the route Gilles has gone in having a public profile but I detected this with the first Ombudsman, whose personality and character was more flamboyant in expressing frustration. The danger is always there. Maybe even Dr. Hill occasionally experiences that. The chairman of the Human Rights Commission has more of an opportunity to be more public and more outspoken on some of his concerns than the Ombudsman has. The Ombudsman is more restricted.

These are potential dangers that will always be there with that office. Mr. Morand acted in a different way. The personality of the individual plays a big role in discharging those

responsibilities and the way the office is managed.

Mr. Bell: I do not think you are going to have any issues such as those to distract you from the work at hand. I suggest you read parts 3 and 4. It will give you all the necessary insights on what your predecessors have perceived your role with the Ombudsman and the assembly to be.

Regarding part 5, can you review the last report before September? That will tell you what business you have to deal with in addition to these recommendation-denied cases. It will give you all the background so that you can come in to it on a current basis.

You do not need to hear me read any more parts. I would be pleased to answer questions on any aspect of it. There has been a lot on the table.

I have one more interesting item on the agenda.

Mr. Shymko: Is that the suggestion of a trip to Fiji and Australia?

Mr. Bell: No, I will let Gilles raise that at the next meeting.

Mr. Philip: I think maybe Yuri is a psychic, but I was going to go in the opposite direction. The committee had agreed during our excellent trip to part of northern Ontario that we would like to go to the Lake Nipigon area with the Ombudsman the following year. Since we are meeting him tomorrow, would it be appropriate for the subcommittee to discuss that with him? Some planning has to be done if that is to be arranged for January. At least in January, nobody can accuse us of going fishing.

Mr. Shymko: Not Attawapiskat again.

Mr. Philip: You were so well prepared with your long Johns. None of us owned any of those things.

Mr. Pierce: I understand the local member is going to have the roads repaired before anybody goes up there. I do not think you want to go until the road work is done.

Mr. Philip: We would fly in.

Mr. Pierce: You would want to be sure to fly. I do not envy anybody going up to Lake Nipigon in January.

Mr. Philip: We went up in January last year. It was minus 32 Fahrenheit and we survived.

Mr. Bell: I think it is a good suggestion but, rather than the subcommittee, this committee should decide before the end of this week whether it wants to cover that with Dr. Hill.

Mr. Philip: I did want a discussion with Dr. Hill over the next few days. May I raise it with Dr. Hill? Would other

members of the committee be interested in finding out what his schedule is and whether he feels that would be productive in the light of his experience of going up to Attawapiskat?

4:10 p.m.

Mr. Shymko: Let us discuss in the committee whether we feel it is feasible and then ask Dr. Hill if he would co-operate.

Mr. Philip: It should be dealt with fairly soon because we are meeting with him this week.

Mr. Bell: He is going to be back with you Thursday morning when you return, after the day and a half at his office. That is another matter you could put on the agenda for Thursday.

Mr. Philip: Maybe the chairman would put it on the agenda for Thursday.

Mr. Bell: Thank you for your attention this afternoon. I do not envy you, having gone through that, being the first time for some of you. It was mind-boggling when I dealt with it for the first time some years ago.

The briefing you will receive tomorrow and the next morning will be a lot more meaningful to you. You can ask questions that would not have occurred to you before, particularly with the review of the committee's dealings with the Ombudsman. I am going back to my vacation. I will not be with you for the rest of the week. You do not need me to go around the Ombudsman's office. Ms. Madisso and the clerk of the committee are more than capable of assisting you.

Ms. Madisso: I do not believe I will be with you either.

Mr. Bell: Okay. The clerk of the committee will be capable of assisting you Thursday morning when you reconvene here.

I have one other item for the agenda. It is personal. I do not care when you discuss it. I suggest you discuss it Thursday. It is the matter of my fees.

Mr. Shymko: You are not quadrupling them, are you?

Mr. Bell: Let me give you a little background. I was retained in 1976 at the hourly rate of \$65. That was increased in either 1979 or 1980 to \$75. I have not sought an increase since. If you want to play the numbers game, I guess it has gone up \$1 a year. If you canvass the rates being paid and demanded by counsel these days, they are between \$100 and \$150 an hour. I do not want the high side, but I am asking you to consider and approve \$100 an hour on the basis that over a period of 10 years it will be an increase of roughly 35 per cent. You can work out what that is on annual basis if you are so inclined.

That is not a rate that is paid to me personally. I am a partner in a 40-person law firm. With overhead expenses, less than 50 per cent of that ever sees its way into my pockets. It is the

firm's retainer. It is still a bargain when you compare it to what the other committees are paying for counsel. I do not want the highest rate because it is good work and I enjoy it. The \$100 rate is what I consider appropriate in the circumstances. It will not have any impact on the committee's budget for legal expenses because you have already set a limit of \$20,000. What it will mean is the concept of counsel, with assistance from the offices of Ms. Madisso and the clerk of the committee, will become more meaningful and I will become more productive in the things I do for you.

For example, Mr. Shymko will tell you that in other years I have gone on those Ombudsman office tours. You do not need me for that. It is a happy coincidence that I am on vacation during this year's tour. I can go back to the cottage and you can go your way. In the scheme of things, it will not impact by one dollar on your budget, but it will be more meaningful and significant from my perspective. You do not have to decide on it now, but if you have the time this week, I would appreciate your consideration and a decision.

Mr. Chairman: We can discuss this on Thursday.

Mr. Callahan: I chair the standing committee on regulations and private bills, and I was told the maximum rate is \$85 an hour with a ceiling of \$15,000. I do not know whether that has been changed. I have to go before the Board of Internal Economy tomorrow.

Mr. Bell: My information is that the guidelines are a maximum of 10 hours a day, a maximum of \$125 an hour. You are shaking your head?

Clerk of the Committee: The Manual of Administration provides anywhere between \$60 and \$85 an hour for legal counsel, although that is subject to negotiation.

Mr. Callahan: With a maximum of \$15,000 overall, if I understand it.

Clerk of the Committee: This committee has capped our counsel's fees at \$20,000 a year. At any rate, it is subject to approval by the Board of Internal Economy.

Mr. Callahan: Has that been approved yet? I would like to use this as a precedent when I go to argue for more.

Mr. Shymko: Feel free. You may not have the quality of counsel we have had.

Mr. Bell: What has been approved is the budget of \$20,000, which, by the way, it has been for about the last three years. Before that it was \$25,000 to \$30,000. So it has kept coming down.

I think the phrase in the manual is, "...subject to negotiation and otherwise approval."

The committee continued in camera at 4:16 p.m.

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Publication

STANDING COMMITTEE ON THE OMBUDSMAN
VISIT TO THE OFFICE OF THE OMBUDSMAN
COMMUNICATION WITH THE PUBLIC
ORGANIZATION

THURSDAY, AUGUST 1, 1985



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Pierce, F. J. (Rainy River PC)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Callahan, R. V. (Brampton L) for Mr. Bossy

Clerk: Decker, T.

From the Office of the Ombudsman:

Meslin, E. Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, August 1, 1985

The committee met at 10:13 a.m. in committee room 2.

VISIT TO THE OFFICE OF THE OMBUDSMAN

Mr. Chairman: The first order of business is the consideration of matters relating to the visit to the Office of the Ombudsman. Is there any discussion on this?

Mr. Pierce: Mr. Chairman, speaking personally, I found the visits very worthwhile and the information provided by all the members of staff to be of considerable importance to me in further understanding what the committee on the Ombudsman will be dealing with. I would like to thank the members from the Ombudsman's office for their information and input into those sessions.

Mr. Callahan: As a practising lawyer for some 20 years, especially in the field of criminal law, I found it interesting that I had not understood the functions or the benefits of the Ombudsman's office until I attended these hearings. I suppose that was the reason for some of the questions I asked about the degree of information put out to the public. That is not a criticism of the Ombudsman's office; it is simply an observation.

In the profession I am in, as you all know, I forget questions. Maybe it is just that I am simply not as well informed as other people.

Mr. Chairman: That just happens.

Mr. Callahan: In discussions with my colleagues in similar types of professions, I have very rarely heard anything about the Ombudsman or about referring someone to the Ombudsman. I would urge that we get the message out to be reviewed. I would hope that it could be done by the various members in the 125 ridings through whatever form of media they have, preferably something like the local cable TV program.

I would also urge this committee to encourage the Ombudsman to prepare a videotape of the whole process we went through. We are in the day of high technology. I found it informative and I am sure other members of this committee did as well. If it was done on a videotape it could be subscribed to by any of the 125 members in Ontario for a nominal fee at a fair constituency budget. Perhaps they could fill in as moderators. They could show it on the various cable programs and also could have their legislative assistants or constituency persons see it.

My one regret in being at these visits was that I was not able to bring my legislative assistant or my constituency representative, my constituency representative in particular because she has never been involved in this political process

before. My legislative assistant has a good idea of what you do with a workers' compensation claim after it has gone to its final appeal.

That would be a far better way of educating not only the members, but also their staffs, so that they could service their constituents more efficiently. Perhaps it would remove some of the desire to just forward claims to the Ombudsman first to avoid having to do these things themselves. This occurs, not because they are not prepared to do it, but because they do not understand they have to do a certain amount of groundwork.

All in all, I think it was excellent. I have one final comment. The videotape might very easily be used in future to orientate new members of this committee or even as a refresher for old members, rather than putting the Ombudsman's office through a couple of days with all its staff being present. I am sure, judging from the amount of the work they are doing, the staff members could be spending their time more wisely if they were out trying to catch up on all of the work they have to do.

Mr. Philip: There are a number of comments I might make. One is I think the committee was pleased that, unlike in the past under the previous acting Ombudsman, its concerns have actually been taken into account and are being implemented by this Ombudsman. So there is a general feeling that--as members from each of the parties stressed on Metro Morning this morning--this Ombudsman is doing a fairly good job and is listening to the committee. That is important. That is quite different from the atmosphere that existed in the past.

Second, one of the things I felt was important was that the Ombudsman can be a resource to members and members' staff. I would hope that, in the light of the fact that we are now getting new budgets to hire additional staff--I believe it went through the Board of Internal Economy yesterday--each MPP will receive what will probably be enough money to hire maybe 1.5 new staff people either in the riding office or at Queen's Park.

10:20 a.m.

Since so many of us are burdened with workers' compensation cases in particular, and also with case work involving other ministries such as the Ministry of Community and Social Services, it would be very useful if Niki Catton and some of the other staff could take time away from their busy schedules to set up a training program. It would be appreciated if that could be done fairly soon, since a number of us either already have hired or in the next week or two will be hiring additional staff. Frankly, I do not have the time to train them. We are simply trying to tread water. We are very far behind, and I am sure there are other members who are as well. We simply have to get in there and start dealing with the backlog of cases. That would be very helpful.

Third, it is important that, before the next meeting if possible, we try to flush out any additional information or research that might be done regarding the additional responsibilities the Ombudsman feels--and some of us feel--he should have, so we can seriously consider that.

Fourth--I hope Gilles Morin will comment on this. I realize he was talking from the gut and we may have to explore this--there may be ways of using the MPPs' offices in some way as an extension of the Ombudsman's office, but I have some caution about that. I want to make sure that everything is done in a way that will not compromise the Ombudsman.

I would feel uncomfortable about the Ombudsman aligning himself, or using municipal offices where the judge could be aligning himself, with the person being judged, so to speak. There would have to be ways of extending the services of the Ombudsman without incurring massive additional costs. Maybe Mr. Morin might want to do some additional thinking about that or even prepare a few thoughts in writing before we meet next time.

Mr. Hayes: As a new member I found the visit very informative. I was a little uncomfortable when I first came on this committee because I was not sure what our role was. I found the Ombudsman's staff to be quite competent and very helpful. Now that I have had this little bit of exposure to the Ombudsman's office in the last few days I find myself a lot more comfortable.

Some of the members who have been on the committee for a while have learned things they did not know before. I thought that was very good. I want to thank the Ombudsman and his staff for the time they took to help us out. I am looking forward to sitting on this committee. I think it is going to be a successful one.

Mr. Sheppard: I sat on this committee for two weeks a year ago to fill in for another member. It has since changed from a select committee to a standing committee. If you were appointed to it before and you had to be away for a day, you could not get someone else to fill in for you. However, as a standing committee, you can get somebody else to fill in for you in your absence.

Mr. Morin has not said a lot, but we are fortunate to have him sit on this committee for more input in the future. I have had a little chat with him. There has been some talk, which has been mentioned this morning, that all the MPPs' offices may become more like ombudsmans' offices. I see some negative as well as some positive aspects to that.

If we can get the money I am sure we could get the staff to help us out in our individual ridings. Ed Philip mentioned that we do not have the time to train new staff. Even if we did they would not be trained as well as we were.

The presentation from the Ombudsman's office during the last two days was a great help to me even though I sat on the committee for two weeks a year ago. I am sure we will all benefit for having that two-day session with the Ombudsman and his staff. I would like to compliment you, Mr. Chairman, and ask you to mention to Dr. Hill that we were very pleased to be taken over to his office. I must say it is a very nice one.

Mr. Morin: Mr. Sheppard's recommendations are superb, excellent. We are all part of the same team, we all work for the Legislative Assembly, and I would suggest we form a committee I

could possibly head and work along with a couple of representatives from the Ombudsman's office. We could then take it from there and make recommendations to the committee. How can members of Parliament take advantage of the services of the Ombudsman? How can we work with him without interfering with his obligations?

For instance, I think immediately of the referral system. Each member of Parliament should have it, at his own cost--it would not be that much--and also have someone from the office of the Ombudsman to explain how to use it.

Also, the Ombudsman could also tell us exactly how we can obtain information from the complainant and build a file so we can bring it to his attention at no cost to us. It also would be beneficial because it would indicate to the public that, not only could we help them immediately, but also, on a problem which may be more acute, more serious, the Ombudsman could provide the expertise and legal advice where necessary.

It is a question of working hand in hand without interfering with each other's obligations. We take advantage of the Ombudsman and he takes advantage of us; for example, to communicate having programs to bring people to appear before a representative of the Ombudsman on an implementation program, not a political one. We have to sell the office because it belongs to all of us. We created it. We have to support it and give it not only financial but also moral support.

If members agree, I would be very pleased to bring some recommendations, but I will leave it to you to decide whether you think this is a good idea.

Mr. Philip: May I just comment on that? It seems to me it is a good idea. However, I worry about duplicating committees. We have a subcommittee. Far be it from me to tell the Liberals whom they should appoint, but if, by any chance, the Liberals were to choose Mr. Morin as a member, then that subcommittee could do the very job he has outlined.

As a matter of fact, the subcommittee could even appoint Mr. Morin as its chairman. He could then call the meetings and direct all the other kinds of things that subcommittee has to do.

Mr. Morin: I do not like the political words in that approach.

Mr. Callahan: Strike that from the jury.

Mr. Philip: Can I be your campaign manager next time?

Mr. Morin: Let us not call it a committee, let us call it an information session I would have with the Ombudsman to arrive at suggestions for the committee. That is the approach I would like to take.

Mr. Chairman: The next order of business is discussing the subcommittee.

Mr. Callahan: Just before we do that--you know the difficulty I have maintaining a train of thought--I want to comment on two points.

Mr. Morin was saying we would have these forms, of which we would be given copies, to take information from constituents. It would be beneficial to take all that information even though the claim would not yet have reached the stage of the Ombudsman and we would have some means whereby we could channel it to his office to be put in a suspense file. We could tell the constituent: "You cannot go yet, but if you reach a certain stage your information is all on file with the Ombudsman now and all you have to do is get to that stage. Either we or you can just call the Ombudsman and it will proceed."

10:30 a.m.

As Mr. Morin says, it would let the constituent know that although we are going to deal with the problem at the constituency level until it becomes a jurisdictional matter, at least we have put him in contact with the Ombudsman with the information in a suspense file. That would give the public a perception that we have done everything possible. It also highlights the Ombudsman.

I agree with Mr. Morin the question is really nonpartisan, as we said before, because if we can smooth the oils of looking after constituents, taxpayers or citizens of this province, it behooves all of us to do it at the least expense but in the most efficient fashion.

The final item is a large one. If this subcommittee or committee that Mr. Morin suggests is set up, I would hope its terms of reference would be broad enough to investigate, and even meet with if necessary, members of the Parliament of Canada with a view to encouraging and urging them, either on an informal or formal basis, to establish an office of Ombudsman for the federal area. If there is one place where the public has difficulty dealing with government, it has to be at the federal level.

Here, at least, they can come down and harangue us and throw octopuses on the floor if they are dissatisfied with what we are doing. If they want to go to Ottawa, unless they live in the area, they have to travel there and it seems like worlds away.

Mr. Shymko: I will pick up on Mr. Callahan's latest comment before I forget my concern about that. I share your concern but I think your approach, to have a subcommittee do that lobbying, would be the wrong one. The most effective way of doing this is, as part of the recommendations of the standing committee to the House, to have a resolution of our Legislative Assembly requesting that the federal government move in that direction.

It would have a much bigger impact in convincing them, notwithstanding the efforts we should be making in any lobbying to assist the Ombudsman. If there is a mechanism or a way of having our Legislative Assembly file a resolution through the Premier to the Prime Minister, it would be much more effective.

I go back to Mr. Callahan again in my initial comments. After 20 years of legal practice, you did not even know about the existence of the Ombudsman's office.

Mr. Callahan: I knew he existed.

Mr. Shymko: Yes, but you were not familiar with his mandate. The tragedy many of us find is that the vast majority of members of the Legislature are not familiar with the mandate of the office and how we can co-ordinate with him and help him. That is a concern I have.

Mr. Morin's suggestion makes a great deal of sense. I see a new development in this standing committee in setting up a permanent linkage with the constituency offices. Their major function, and the reason they were set up, is for constituents and the public to come with complaints to have us resolve them. Much of the constituency work, as we know, is in that area.

If we could link that initial stage of intake and information process with the Ombudsman's office, using your expertise and that rotating file that you had--I do not know what it was called--maybe there will be a time when the Board of Internal Economy will realize the wisdom of giving us all a computer to simplify the process. You have the advantage of using one. We do not, unless some riding association has the financial capability of providing a constituency office with one.

Setting up that permanent system of linkage is crucial. If we could set something up in this first year, I would support having a subcommittee that would be different from the one that deals with the complaints to the committee. I do not think we should use the same one, we should have a separate one. I certainly will support Mr. Gilles Morin, whose calibre and expertise as the former Ombudsman for northern Ontario I support, to be the head of that subcommittee.

I think it should work exclusively in that direction because it is a two-way street. I cannot understand why our caucuses would not dictate to each member of caucus that in every Queen's Park report we issue, and this is paid by the taxpayer, two Queen's Park reports per year, you are covering practically three to four million citizens of this province. Each time the report comes out, why not include a paragraph of information on the Ombudsman's office, with the emblem of the office, the phone number and so on? I do not see why a member would hesitate.

We do this on our own because we want the credit. I recall the former member for Cochrane North, whose name can be mentioned, Ren  Pich --Ed, you were a witness as well--in Gilles' office when he violently objected to the Ombudsman's office moving into his turf in the constituency. He said: "The real Ombudsman here is me. I am the guy who deals with complaints and you are just interfering."

There is that unfortunate attitude among many MPPs, that they are the guys who should be getting credit for resolving problems, not the Ombudsman. Therefore, they use the expertise of

the office but they are in the front line for the credit and glory.

Mr. Philip: It is really Gilles who succeeded Piché, not anyone else.

Mr. Shymko: Some members are concerned.

Mr. Philip: He handled too many of Piché's problems, that is why René went down.

Mr. Shymko: One of the things we should do is somehow--you cannot order members to do it--have the Queen's Park report provide information on a constant basis on the operation of the office. It would be a help.

Mr. Philip: In fact, some of us, now that we are not going to be using all that space to attack the government in the Queen's Park report, may have extra space to advertise the Ombudsman.

Mr. Sheppard: It will be pretty hard to attack your own Premier, Ed.

Mr. Shymko: You should come and see the office of the honourable Rueben Baetz compared to yours. I have never seen such sense of humility in regard to space and accepting it.

Mr. Philip: You people have so much to be humble about it is appropriate.

Mr. Shymko: We are breaking new ground in a historic way and I support the concept of a subcommittee. I nominate Mr. Morin in a nonpartisan way.

Mr. Baetz: Much of what I want to say has already been said and I do not want to be repetitive. I also felt the crash course on the Ombudsman was for me, very valuable and illuminating. I have a much better feeling of what the Ombudsman is all about.

I sensed at the meeting, as I am sure all of us did, that on this, the 10th anniversary of the Ombudsman and especially now with the new Ombudsman there is a feeling we should not just carry on as we have over the last 10 years. This a very good time to fundamentally review the role of the Ombudsman and what we have done in the past but also see what other avenues are out there that we might explore for extending the service of the Ombudsman.

That presents a special challenge for this committee working closely with the Ombudsman's office, and I would hope we can work together in a nonpartisan way to see how these valuable services for the citizens of Ontario can be further developed and expanded.

We recognize any of this will, in all likelihood, have to take place within restraint, although maybe the Liberals now are going to blow a lot of money very easily, I do not know. I suspect they will not. Anyway, there is a challenge.

Mr. Philip: They will blow it on all those contracts.

Mr. Pierce: Just in advertising.

Mr. Chairman: I thought it was going to be nonpartisan.

Mr. Baetz: That is right. It will take some doing on Ed's part but I think he will come around.

10:40 a.m.

There is a real challenge for this committee, particularly around this area of closer--I liked Yuri's word--linkage with the constituency offices. There are two very distinct roles, one for the MPP's constituency office and one for the Ombudsman, set down by legislation. We cannot start to do the other person's job, but there are definitely areas in which we can be mutually supportive and reinforcing without doing that. I hope this committee can look more closely and systematically at how that can be done.

I would like to go back to the feeling I expressed at the meeting. In one way or another, surely, without spending a great deal of money or time, the work and the role of the Ombudsman's office can be better understood by our constituency officers. Surely this committee can come up with some realistic suggestions as how that can be effected.

I am not going to even suggest a pattern for that, but it is something we should not neglect. There is a lot of virtue in it.

Again, I want to thank you, Mrs. Meslin, the Ombudsman and all the staff for a very thorough briefing and for the spirit in which it was given. When Dr. Hill said yesterday, "Any information we have here is yours; it is accessible," I felt that was the spirit that is so essential. All of us know, if any governmental agency wants to stonewall and withhold information, it can damned well do it. It is pretty hard to get at it.

Mr. Shymko: You should know.

Mr. Baetz: Yes. Mr. Shymko, whose side are you on?

Mr. Shymko: I am a devil's advocate.

Mr. Baetz: In any event, I like that spirit of the Ombudsman. It was a great day and a half there.

Mr. Henderson: I echo the comments made about the helpfulness of the last few days. One of the warnings I had before I joined this committee was it would be a dull one. Now that I know the composition of the committee and have met some of the people from the Ombudsman's office, I find it inconceivable that will be the case. It will be worth while and interesting. The orientation sessions have been very helpful.

Mr. Pierce: I have one question. Are there continuous minutes kept of all the meetings of this committee? Would there be minutes kept of sessions held yesterday and the day before? Are

they available to members of the committee? Are they distributed on request?

Mr. Philip: We do not keep minutes of the in camera meetings or discussions of individual cases.

Mr. Pierce: I am referring to the meetings we have had this last week. Can we receive minutes of those?

Clerk of the Committee: When we are away from Queen's Park, there is no reporting service. Verbatim transcripts of the discussions at the Ombudsman's office are not available, but the clerk's minutes of the committee's proceedings are available, on request.

Mr. Pierce: I feel it is unfortunate in some respects because a lot of information came out of that session at the Office of the Ombudsman. I am afraid some of it has gone over the top and some has been digested. We will have to start picking our brains a bit more to remember everything said, or we will have to access the offices of the Ombudsman.

Mr. Shymko: Are you making a motion?

Mr. Pierce: I could do that, yes.

Mr. Shymko: Why not? I would like to see copies of the minutes.

Mr. Chairman: Is it so moved?

Motion agreed to.

COMMUNICATIONS WITH THE PUBLIC

Mr. Chairman: The next order of business is the appointment of a subcommittee on communications from the public.

Mr. Philip: I was asked to brief some of the new members on the subcommittee's role. You received a lot of information. The essential elements of the subcommittee's role is in a section called principles. It is towards the back of the briefing notes on page 45.

I will go through each of these points. The important element is that we are not here as a last court of appeal on decisions made by the Ombudsman. We are not here to rehear individual cases. Unfortunately, many people think that is our role.

When we receive correspondence on that, the subcommittee's normal recommendation is that the person be so advised. A less offensive way of advising him than to say we are not going to consider the matter is contained in a sample letter, on page 52, sent from the chairman of the subcommittee.

The second role is that we will not deal with matters currently before the Ombudsman.

Third, we see our role as dealing primarily with matters involving a policy or procedure of the Ombudsman. There may be people who write to us saying the investigation procedure is wrong because it does not follow this or that principle.

You can read the principles. "At all times and in all circumstances, the committee sets its own procedures and determines how communications are to be handled, subject to the provisions of the committee's order of reference and to the provisions of the Ombudsman Act."

The committee's role is not to second-guess the Ombudsman or to rehear cases.

"The committee has consistently declined to act as a 'court of appeal.' Each case raised by a member of the public will be individually considered and decided by the committee on its own merits. No one has the automatic 'right' to appear before the committee. Except in very unusual circumstances, all information, correspondence and reports exchanged between the communicant and the committee and between the Ombudsman and the communicant are shared between the committee and the Ombudsman." We follow the normal confidentiality procedure the committee follows.

"The committee reviews the documents supplied to it and takes its decisions at an open, public meeting, but names of communicants are not used and the documents do not form part of the committee's public record." We do not meet in public, but we will meet with the whole committee, which is a public meeting, and deal with those documents.

We try not to raise false hopes that the subcommittee will solve people's problems. "The committee will not consider any communication if it involves a complaint which the Ombudsman is still investigating."

If you turn to page 47, you find the procedure followed in dealing with members of the public. It is very unusual for us to call a member of the public before the committee, although there are exceptions if that person has some interesting information dealing with policy.

Rather than read pages 47, 48 and 49, I will leave them for your inspection. I am open to any questions. The clerk will be able to assist me.

10:50 a.m.

Mr. Shymko: This is one of the most delicate and complicated parts of our deliberations, namely, how to perceive our responsibility with regard to communicating with the public in dealing with such cases, not appearing to be the ultimate appeal body and yet not closing the door where there may be genuine concern about the service provided in a particular case or decision reached by the Ombudsman's office.

Although I agree that in unusual circumstances we should allow an individual to appear, we should retain that option. We

should still have an option that the committee act as a final appeal. I would not publicize the fact that we are the ultimate appeal body, but in fact we are. The reason we are dealing with these cases and have a subcommittee looking into it automatically indicates this body is a final decision-making or appeal one.

I still am quite confused when one says the committee has consistently refused to act as an appeal body for cases, and yet it does this by going over these cases and even allowing an individual to appear before the committee when the case is unusual. I am in a dilemma in accepting the statement that we refuse to act as an appeal body. I just cannot understand that. I would like to have more clarification from Mr. Philip or others on this.

Mr. Baetz: On a point of information, Mr. Chairman: How often have people appeared before this committee as complainants?

Mr. Philip: Once.

Mr. Baetz: Is there a precedent for it?

Mr. Philip: On one occasion, but they appeared in camera. In a parliamentary or a constitutional democratic system, we get ourselves into openings for real abuse if we do not clearly distinguish between the legislative or parliamentary role, the administrative role and the judicial role.

In democracies where the elected officials start tinkering with the system--and I know that happens in other provinces in Canada and in some of the states in the United States and more regularly in other countries--then it is open to all kinds of abuses. While occasionally someone, because no system of justice is perfect, may not have a correct decision from a judicial body or something like that, if the parliamentarian starts tinkering, then the abuses are much greater on the other side. It opens itself to all kinds of patronage, to the giving of special privileges to friends or constituents of politicians and things such as that, rather than judging on the merits.

At all times, our role has to be that if there is a procedural or thinking problem, or a systemic problem, to use the Ombudsman's phraseology, if there are cases which suggest the Ombudsman is not proceeding correctly on types of cases and there is a problem in his office, then we deal with the procedures. But I certainly do not think our role is to hear or rehear cases.

How many cases do you deal with in a year?

Mrs. Meslin: Do you mean investigative or regular? About 15,000 regular cases.

Mr. Philip: How many are found in the favour of the client, or how many are found against the client?

Mrs. Meslin: Generally, of the 500 that we handle which are jurisdictional, one third are for the complainant and two thirds are in agreement with the ministry or agency.

Mr. Shymko: For the system.

Mrs. Meslin: Yes.

Mr. Philip: So we are opening up a system in which this committee could be open to rehearing two thirds of the ones that are found against the client. I find that preposterous. It also tends to lead itself to political deal-making. For instance, Yuri, you support my client, my constituent or my hobby-horse this time and I will support yours next time.

Mr. Shymko: Oh, come on. You are going to extremes and you are completely distorting what I am trying to say.

Mr. Philip: I am not trying to do that, Yuri. I am just trying to say I am sceptical that we not interfere in the real independence of the Ombudsman and his decision making.

Mr. Shymko: As our mandate, we have to assist the Ombudsman. There were problems in the Ombudsman's office a certain time ago, during a certain period of the functioning of that office. We even criticized the Ombudsman publicly on certain decisions he had made. We intervened in the internal operation of the Ombudsman's office in a way that would have lead someone normally to say, "This is not your function." But the reason we were doing that was to give a perception of fairness, of justice and of efficiency with respect to the public interest. I think it would be wrong for us to eliminate that perception by saying this committee refuses to act as an appeal body in unusual circumstances. I stress that I do not eliminate very unusual circumstances.

There may be times--we are talking about a human institution headed by a human entity. He or she will differ with regard to personalities. In the future there may be a situation in which there is a genuine problem and an ultimate appeal would have to be made before this standing committee. I hope things will be perfect, but institutions are not perfect and systems are not perfect. If we can enhance our efforts to maximize justice and efficiency as a final review, we should not eliminate that by saying in a sentence that the committee has consistently refused to act as an appeal body. I do not accept that. We cannot entrench that statement.

I agree with Mr. Philip in that we cannot give the impression and publicize that we will start dealing with the normal procedure for, say, 75 of the cases that were not resolved properly. No, absolutely not. But what I do say is we must have some channel or some way of indicating that in unusual circumstances we are indeed the final appeal body.

Mr. Sheppard: With regard to what Mr. Philip and Mr. Shymko have said, a year ago this committee dealt with several cases in which the Ombudsman and, I will say, the Workers' Compensation Board could not agree. Those few cases came before the committee and they were dealt with in front of all three parties. I did not see anything wrong with that. Both sides had professional people here.

11 a.m.

Mr. Philip: That is not what we are talking about. We are talking about the correspondence from people who have been turned down. The only cases that come before this committee are cases in which the Ombudsman in his decision, or in his judiciary role, if you like, has decided the client is right and where the government body is still in dispute with that.

What Mr. Shymko and I are now talking about are those two thirds of complaints that come to the Ombudsman where the Ombudsman says to the person, "I am terribly sorry, I have examined the facts we have at hand and I do not think you have a legitimate claim against the government ministry." That is a big difference.

Sure, our role is to act as a decision-maker in disputes between the Ombudsman and the government. Those disputes are always about people or corporations which have a claim against the government. That is the legitimate role of the committee.

The legitimate role of this committee, though, is not to second-guess the Ombudsman on those first-line instances where he says to a person, "I am sorry, I do not think you have a case."

Mr. Sheppard: Where does the client go then? To the courts?

Mr. Philip: He can go to the courts. Where do you go if you lose a case in court?

Mr. Sheppard: You go to the Court of Appeal.

Mr. Callahan: I am sorry, I should not be jumping in. Even they have rules that would limit the continuation of a case. For instance, the Court of Appeal will normally not receive new evidence, unless it was unknown to counsel at the time of the trial or unless it was newly discovered and with legitimate efforts he could not have found it. The reason for that is they do not want to retry every case. If they did, it would be an endless situation.

Mr. Sheppard: It is the same way if you go to the Workers' Compensation Board and appeal a case. You have to have new evidence or they will not listen to the appeal.

Mr. Callahan: That is right. I understand what Mr. Shymko is saying, but I think there has to be a point at which justice has been done to the extent that it can be done.

What we are doing with the subcommittee is simply giving three people, as opposed to this entire committee, the opportunity to have a second look at what the Ombudsman has done. But if you take it from the subcommittee and you say, "We do not have any confidence in you, subcommittee, but we want to have another look at it and perhaps invite the public here in special circumstances," you could have something go on forever.

You could have people in here raising all sorts of red herrings or perhaps legitimate points. If they are legitimate points, then they become new evidence or clarifications. I am sure if they were put to the Ombudsman again he would consider them.

I have jumped in. I am sorry.

Mr. Sheppard: I am listening.

Mr. Callahan: The additional factor is that if you continue this process to an appeal level, you then leave yourself open to the possibility of an application for judicial review. In fact, what we are doing is taking on a judicial function, no longer an administrative function. It is, therefore, reviewable by the courts on any point, even the point that we have not adhered to all of the requirements of the Statutory Powers Procedure Act and also on the grounds that we have not heard both sides or given a full and fair hearing to the individual. That is quite apart from the numerous arguments which could be made under the Charter of Rights and Freedoms. There are 47 sections there. You could probably find all sorts of them.

If what you are saying is that we do not have confidence in the judgement of the three people who review the Ombudsman's refusal, when he or she who follows Dr. Hill may have unusual idiosyncrasies that we are going to be concerned about, you are really leaving it to the three on the subcommittee to do that. If we are not prepared to rely on their judgement, the preferable alternative would be to have all of us look at them. I do not think that is practical.

Mr. Philip: Would it help if I gave you the two different types of cases and suggest which ones the subcommittee or the committee might look at and which ones we should automatically reject? Maybe you will get the point I am trying to make.

Suppose somebody comes to us and says, "The Ombudsman refused to look at this matter because he said it was nonjurisdictional." That is a policy type of thing. The Ombudsman in cases such as this is saying he has no jurisdiction over it. In that case it is legitimate to meet the Ombudsman and say, "Why is it you and your lawyers feel you have no jurisdiction in this? Have you tested it in court? Can we examine the act?" That is a policy type of issue.

On the other hand, if Mrs. McGillicuddy says, "Look, my leg really was sore and the Ombudsman looked at the medical evidence and the Workers' Compensation Board's evidence and should have understood that my medical evidence supported my case and is too dumb to understand that," that is not a policy sort of case. It is not our role to retry every case.

If you take that to its logical conclusion, then the Legislature, as the ultimate court of Ontario, should be retrying anybody who lost a case down in county court because he is not happy with the decision. When you get countries where politicians do that, you get an abuse of the democratic system.

Mr. Henderson: Mr. Chairman, may I ask for a clarification of something? There are two different kinds of processes going on here. One is that people are speaking spontaneously and the other is that people are putting up their hands and getting on to a roster. I would like to know which way we are going to proceed. I have been on the roster quite a while and I can jump in the same as anybody else.

Mr. Chairman: You were supposed to follow Mr. Callahan. I am sorry about that. Go ahead.

Mr. Callahan: I got you there faster by cutting off Mr. Sheppard.

Mr. Henderson: My point is going to seem like a let down after that preamble. I see an awful lot of validity in the point Mr. Philip makes and the point Bob makes from a different point of view.

I agree with what Mr. Philip says, but I am a little nervous about closing the door and saying "under no circumstances." As I read this letter, the letter stops short of doing that and allows for what it refers to as the most extraordinary situation. Rather than trying to come to a cut-and-dried, dogmatic decision on this, could we not say in general that we do not. We talk about what goes on between the Ombudsman and the government as the agency of the ministry, not what goes on between the citizen and the Ombudsman. Certainly, we do not intend to get into that routinely because, for one thing, if we did then with the number of hearings we would do nothing else.

Maybe it can be left, since it is a little bit ambiguous, with the understanding that under very exceptional circumstances we might. That would be a reasonable outcome of this discussion.

Mr. Shymko: The first part of that paragraph on page 50 makes a lot of sense to me from the word "although" right to the words "investigated by the Ombudsman." It is the second last sentence and the remaining part, the second half of that paragraph, that contradicts the very first part.

We should say that we do not intervene in complaints and in investigations except in the most unusual circumstances. That is what has been said in the first part. Then all of a sudden we categorically reject all that by saying the committee has consistently refused to act as an appeal body, but we do act in unusual circumstances. We do, and we should leave it at that, not contradict that by saying we have consistently refused. We have not refused because we did deal in certain unusual cases. We have not consistently refused; it is not true. We did deal in most unusual circumstances and we should continue to do so.

That is the point I am trying to make. I was very confused by the second part of the paragraph.

Mr. Philip: Give me examples of where we have acted as an appeal body.

11:10 a.m.

Mr. Shymko: Let me give you the example of the positive result of the case of employees in the Ombudsman's office. They did not go through the procedure of government agencies, recommendation-denied cases and so on, but this was a genuine complaint against the Ombudsman and his office because there was no other body that employee could have gone to except this subcommittee.

Mr. Philip: That was a policy issue, because there was no grievance procedure in the office.

Mr. Shymko: Absolutely. There may be some other elements we will discover in future that will have to be corrected.

Mr. Philip: That was not a case in which someone wrote a letter--

Mr. Shymko: She might have written. Let us say, had she written a letter, it would have come to the subcommittee. It came in a different way, but we dealt with it. We became the ultimate appeal body. We looked at the case in confidentiality, made recommendations and saw the creation of a system or process that has eliminated or rectified that problem.

Mr. Philip: However, if you take that one case, there was no decision of the Ombudsman on something that had come before him that we in fact reversed. It was a series of bad management policies that were changed by the new Ombudsman as a result of some employees who felt they were aggrieved, but no one was fired who was rehired. No one got a promotion who had not had one before. In fact, we did not act as an appeal body in that one case you have given. I say you cannot find an example of our acting that was as an appeal body.

Mr. Shymko: The fact we accept that correspondence, deal with complaints in it, set up a subcommittee that goes into detail and reports to us and then send a reply indicates we are taking steps in looking into a request by an individual who perceives us an appeal body.

In doing all this, why are we saying at the end that we refuse to act? We do not refuse. We may not have ruled on it, but we certainly have dealt with it. In most unusual circumstances, we have and we should continue to do so.

Mr. Callahan: As a point of clarification, what you are saying is we should put in the words, "most unusual circumstances."

Mr. Shymko: Yes, and those are the letters you will be receiving because something in that correspondence may--

Mr. Callahan: However, if you put in the words, "most unusual circumstances" you let everybody out there know there is this additional appeal and get into the issue of whether you would be challenged in the courts on the basis of whether you exercised a proper discretion in determining they were most unusual

circumstances. That is a real danger.

Mr. Philip: I have yet to see a person who did not feel, when he lost the case, his were the most unusual circumstances. Everyone thinks the pimple on his bum is the sorest one in the whole world.

Mr. Callahan: That is getting in at ground zero, is it not?

Interjections.

Mr. Baetz: As a nouveau here, I have been listening and I must say I am inclined to agree more with Mr. Philip than my very distinguished colleague and friend, Mr. Shymko. It really seems to me, if the committee is prepared to participate in the due process, even in an unusual circumstance, we are getting into an area that is inappropriate.

This committee is set up to ensure the due process functions well. I do not think we need to apologize or stop if we feel the system somehow is breaking down or due process is not followed, but for us to say, "We will handle the really hard and unusual cases ourselves," or set ourselves up as sort of final court of appeal, I just cannot help but think it an inappropriate role, even if we do not do it often.

I suppose I got worried, and I can agree that, if we start to say we only deal with the unusual, then because we are already dealing with a lot of unusual cases here, who decides, "Yes, you are an unusual case or you are more unusual than the other one." I just think we have to stay away from that. I think there comes a point where the due process ends. We have to be sure the machinery has been set up and that in fact it is functioning correctly, but at a certain point in time we also have to be prepared to tell the world, "That is it." That happens with the Supreme Court and anything else. There comes a point when you say, "Look, this is the final decision." I do not think we need to apologize for that.

Certainly there is this machinery for the other cases in which a ministry or a government agency does not agree with the Ombudsman. There has been a process of appeal set up in a sense. Anyway, I would be worried if we got into individual cases. We were talking about two different kinds of cases. There were several cases of staff members in the Ombudsman's office who were appealing to this committee and I see that as quite different from a citizen out there coming to this committee. If, for whatever reason, the administration in the Ombudsman's office is so poor that staff members there feel they are not administered in a just and fair way, I think the committee has a responsibility to look into that, to hear both sides of the argument. That is a different story from dealing with someone from the general public.

Anyway, that is the view of a nouveau.

Mr. Chairman: I would just like to bring to the attention of the committee that at our first meeting we did approve appendix B which is on page 51. Some of you were not here,

but I remember that was approved. We should decide now who the members of this committee will be. I think our terms of reference are quite well outlined in appendix B.

Mr. Callahan: What Mr. Shymko is saying is that should be enlarged to include this additional factor.

Mr. Shymko: If I may, I think we should continue the tradition--

Mr. Chairman: It seems to me you have moved that--

Mr. Shymko: I would like to make a motion, Mr. Chairman, to continue the tradition of the former select committee on the Ombudsman. It has never said it will refuse to act as an appeal body, it has simply said that in the past it has refused. It does not say it shall refuse or it must refuse. In the past, it has refused, but that refusal has come under the point of view or perception we have had of this committee that, except in the most unusual circumstances, we do not act as an appeal body or consider intervention and complaints investigated by the Ombudsman.

That has been the tradition of this committee constantly and because of the confusion of that paragraph, I would like to move and reiterate what traditionally has been the view of this committee, namely, and this is my motion, that except in the most unusual circumstances, this committee will not act as an appeal body and will not intervene in complaints investigated by the Ombudsman.

Mr. Callahan: Can I speak to that?

Mr. Chairman: Yes. We do not have a seconder.

Mr. Callahan: We are in committee, so I do not think we need a seconder.

Mr. Chairman: We do not need a seconder. Okay, fine.

11:20 a.m.

Mr. Callahan: The way I view this committee, having just been on it the brief period of time, and having looked at the standing orders, is that it really operates in rather, if I can say, a Lucy-Goosey fashion. I am not sure we do not sometimes go outside of the standing orders. It seems to be almost--we are assuming whether we have it or not--an equitable jurisdiction.

Appendix B says these matters you are talking about require a unanimous decision of the subcommittee. Built in there you have the unanimous decision of three unique people who come, without bringing politics into it, from different philosophical background. I would think that in order to get anybody to be unanimous in that vein, there would have to be a pretty good investigation, a pretty determined look at it. I would think you have the protection built in right there.

Just to go back to the final item, if I as counsel for a

client were trying to advise that client, it is a principle of law that you have to have some degree of certainty. You cannot have this "as long as the chancellor's foot" routine, or you would never be able to tell a client to settle, to sue or to do whatever. That is the real concern I have. I know what you are getting at, but you will see it throughout all the court system. Even in the Supreme Court of Canada there are situations where, in order to get to the Supreme Court of Canada, you have to get special leave from a panel of three judges. Very often cases are turned down, not because they did not have merit, but on a practical basis, because the court can only hear so many of them and only the more important ones. However, you get finality because you do not get special leave.

You may say in that case that there is a very great danger, as you are suggesting here, that in the most unusual circumstances, the panel of those three judges may not not decide that there are unusual circumstances and turn down an application. A person is left without justice. The process has ended.

I know what you are getting at, but I think it is solved with the words "unanimous decision of three subcommittee members." You could even say, as I said when I started speaking just now, that because this committee is perceived to be equitable, if there were unusual circumstances, I can be sure that members of this committee would look at it and say, "We made that rule but we are going to change it." I am sure if that had been the situation--I am not sure it was in the case of the Ombudsman's employees--that if they had come in here and said, "We want some redress," I cannot believe that anybody would have sat around and said: "I am sorry but Appendix B says that we cannot be a court of appeal. Go away." It would be absolutely ridiculous, because you could see the merit and the equity in it.

Maybe you will have a unanimous decision of three members and you will have that feeling amongst all the members that it is an unusual circumstance. However, if you write it down it will get out by word of mouth, and the guy or gal who does not get satisfied by these guys reaffirming the Ombudsman's decision, you will find we will wind up in further litigation. Once one of those cases hits the press showing that you can do that, the thing will blow open.

Mr. Shymko: It is in the report. It is public. It is written down.

Mr. Callahan: Yes.

Mr. Shymko: It is written down. Everybody knows.

Mr. Callahan: I think you would be opening the flood gate doors. Many people, after talking to a member of the Ombudsman's staff or maybe to Dr. Hill himself--although I cannot believe it--might say, "I do not like that guy. I want to challenge that. I want to take him on." This is particularly likely in this day and age with all the rights and protections that really are available.

Mr. Shymko: Ultimately Parliament has always been perceived by the public as the final say, and this is why we go to Parliament as a legislative committee and as parliamentarians. That perception is there. To destroy that in our system of democracy is wrong--to close all doors.

Mr. Philip: We are not destroying it.

Mr. Shymko: I am reiterating the tradition and the position of this committee since 1975 or whenever it was created. The statement is there that except in the most unusual circumstances, we are not an appeal body. We do not intervene in complaints investigated and so on. All I am trying to do is highlight that.

Mr. Sheppard: Before I am cut off, I would like to ask: If we have an Ombudsman, and if we take his responsibility away, what is the use of having him?

Clerk of the Committee: I wonder if I could just clarify what the subcommittee is all about. Mr. Shymko is correct in stating that there is a perception in the public that the subcommittee or even the committee is an ultimate appeal. What the subcommittee means in stating that it is not an appeal body, and it has consistently refused to act as one, is that when the committee gets a communication from a member of the public and it sits down and reviews the case materials, it is looking at those materials with a view to looking for a systemic problem, something in the guidelines or function of the Ombudsman that prevented him from adequately investigating the complaint, but not, to use Mr. Philip's example, deciding whether Mrs. McGillicuddy's leg was sore. In that respect, they are not an appeal body. They are looking for ways to advise the Ombudsman or looking for systemic problems of a sort.

Mr. Shymko: But they are an appeal body in another respect.

Mr. Baetz: Why do we not make it clearer, just the way you have said it, in what way we are an appeal body, so there can be no doubt in the minds of the public?

Mr. Chairman: Is there any further discussion on this motion?

Mr. Shymko: Do I have a seconder or am I alone in this?

Mr. Chairman: They tell me you do not need a seconder.

Mr. Shymko: My final concluding remark is that has been the rationale and the intent of the past committee. It is just that it was said in a very confusing way in that particular paragraph. I think we should reiterate that position of the committee and continue to deal, process and deliberate with the same intent and approach as the past committee, namely that we are not an appeal body. We do not intervene, except in the most unusual circumstances. That has always been the tradition.

Mr. Callahan: Could I have a point of clarification? If we are voting on your amendment, are we striking out paragraph 11 on page 48? It would have to be struck out.

Mr. Shymko: If I may comment, it begins with the words, "If the communicant is not satisfied with the subcommittee's decision." A communicant's dissatisfaction with a subcommittee decision is a dissatisfaction with a standing committee decision, because a subcommittee's decision is our decision and our decision is final.

Mr. Callahan: No, but I thought what 11 said refers to after they make their decision.

Mr. Shymko: That is after that. What people will try to do is after we have reached a decision in the most unusual circumstances and it is not to the benefit of the complainant, he will still want to pursue it further. That is the next stage. It says here that we simply close the door at that stage. There is nothing wrong with paragraph 11, absolutely not.

Mr. Chairman: You have heard Mr. Shymko's motion. Are you ready for the question?

Mr. Sheppard: What was that motion again?

Mr. Shymko: The motion was that except in the most unusual circumstances this committee will not act as an appeal body and will not intervene in complaints investigated by the Ombudsman.

Mr. Philip: That is placed on page 50 after deleting the sentence, "The committee has consistently refused," or is it an addition to that?

Mr. Shymko: It has in the past refused to act as an appeal body, but it has said, and I am reading the statement: "This reflects the committee's strongly held view that except in the most unusual circumstances this committee should not even consider intervention in complaints investigated by the Ombudsman." I am reiterating the same thing. Except in the most unusual circumstances, this committee should not act as an appeal body for cases in which persons have complained to the Ombudsman.

Mr. Philip: Then you have me confused. You are amending something by saying the same thing that is already said there.

Mr. Shymko: I am clarifying it because it is very confusing here.

Mr. Philip: Please tell me what you are putting in where.

Mr. Shymko: I am not putting anything anywhere.

Mr. Philip: Then you do not have an amendment.

Mr. Shymko: I do have an amendment because the sentence which says that "the committee has consistently refused to act"

insinuates that this committee refuses to act, and there is a big difference.

Mr. Philip: Your amendment is to delete that sentence?

Mr. Shymko: I am not deleting anything. I am just saying that this committee still has the mandate of not acting as an appeal body, not intervening in complaints except in the most unusual circumstances.

11:30 a.m.

Mr. Philip: It says that in the sentence before.

Mr. Shymko: It implies that because it has consistently refused, then by its very function it refuses to. That is not the intent.

Mr. Philip: Mr. Chairman, would you have the clerk read the amendment. I am completely lost. I do not know where he is putting what.

Mr. Shymko: I am not putting anything, I am just reading.

Mr. Philip: Then we do not have an amendment. You cannot vote on something you are not putting.

Mr. Shymko: I am stating something because of the implication of a statement that contradicts what this committee was originally all about. Because it has consistently refused to act as an appeal body implies that this committee refuses to act as an appeal body in most unusual circumstances.

Mr. Philip: I cannot vote on something that is not an amendment. Does the clerk have an amendment he could read to us?

Clerk of the committee: Mr. Shymko moves that except in the most unusual circumstances this committee will not act as an appeal body and will not intervene in complaints investigated by the Ombudsman.

Mr. Philip: Mr. Chairman, I ask you to rule that out of order on the grounds that you cannot amend something by restating it. Since it is already stated, you cannot amend it. Those are the exact words that are in the paragraph.

Mr. Shymko: As a confused member of this committee who has indicated my confusion with page 50, can I ask for a clarification either from the chairman or the clerk to explain this. Do we, sir, except in the most unusual circumstances refuse to act as an appeal body and refuse to intervene in complaints investigated by the Ombudsman?

Mr. Chairman: I will ask the clerk to answer that question since I am a new member of the committee.

Mr. Philip: Or ask the new clerk.

Mr. Shymko: May I rephrase it? Is the following statement acceptable in terms of your understanding of this committee's function: Except in the most unusual circumstances this committee refuses to act as an appeal body and will not intervene in complaints investigated by the Ombudsman?

Clerk of the Committee: I believe that accurately reflects the historical notion of the committee.

Mr. Shymko: Thank you.

Clerk of the Committee: Is it your suggestion that that paragraph be inserted in the principles of the committee in future reports?

Mr. Shymko: I simply wanted clarification. If your answer to the statement is yes, then I am satisfied. It means that we do not intervene. We are not an appeal body except in the most unusual circumstances. I am satisfied with that.

Mr. Philip: Which means we do not have an amendment.

Mr. Chairman: I think we should name the subcommittee.

Mr. Sheppard: Mr. Chairman, I am still confused.

Mr. Chairman: I think everything is very clear now.

Mr. Sheppard: Provided you accept the--

Mr. Philip: Howard, I will not attend your picnic this summer if you make things worse.

Mr. Sheppard: Carry on, Mr. Chairman. I do not want you to come to my picnic.

Mr. Hayes: I just want to get a little clarification. My understanding is that if you have the subcommittee it will be dealing with various cases that come in. It will also bring some of the cases to the whole committee.

Mr. Chairman: That is what I understand.

Mr. Pierce: No.

Mrs. Meslin: No.

Mr. Hayes: Some cases may come back to this committee if the decision is not unanimous, or if they feel this committee warrants more input. What is to stop a member from saying, "I find this an unusual case and I think we should deal with it"?

Mr. Chairman: Nothing is stopping it.

Mr. Hayes: Nothing is stopping it, so I do not think you have to change anything. Every member has the right to bring up his feelings on an individual case. I do not see where it should be a problem.

Mr. Callahan: As does the complainant.

Mr. Hayes: As does the complainant.

Mr. Callahan: I am suggesting to you--

Mr. Hayes: Without advertising.

Mr. Callahan: --that unless you can define what "unusual circumstances" means, you may as well say that we are an appellate tribunal. In fact, the subcommittee is really just acting as a resource clerical backup group to read the reports instead of all of us reading them. Then it gets back before us.

I would like to know how page 50 ever got passed. How did that ever become policy? Was that an order as well?

Mr. Shymko: That is a report to the Legislative Assembly.

Mr. Callahan: Is that right? The Legislative Assembly adopted it?

Mr. Shymko: The 125 members adopted it.

Mr. Callahan: It may have greater force and effect than appendix B when we interpret it.

Mr. Baetz: It is like saying I am celibate except for unusual circumstances.

Mr. Chairman: Has the governing party selected a member to sit on this committee?

Mr. Shymko: A celibate point is no good.

Mr. Pierce: Did you say two people or three people? That is the intention of the committee?

Mr. Chairman: That is right, a representative of each party. I am asking who the representative will be of the governing party.

Mr. Morin: Because of the possible legal complications, I suggest Mr. Callahan should be on the subcommittee.

Mr. Callahan: Where do we meet?

Mr. Chairman: Unfortunately, Mr. Callahan is not a member of the committee.

Mr. Callahan: That is right. I am just a sub. That was what I was in my football days. I would water the grass to get my uniform dirty.

Mr. Shymko: Why not ask the Premier to replace you and make you a permanent member?

Mr. Philip: We could pass a unanimous resolution of this committee that you remain on the committee permanently. We could even put that in your riding report.

Mr. Callahan: What riding report?

Mr. Shymko: Listen, you are paralyzing a subcommittee unless you come out with an "A".

Mr. Henderson: How many are there?

Mr. Chairman: One from each party.

Mr. Morin: Is it possible, for instance, if one is appointed today, to leave it until he replaces me for the duration.

Mr. Philip: We have done that.

Mr. Chairman: That is possible, yes.

Mr. Philip: If a member of the committee is not able to be there, then we--

Mr. Morin: I can make use of the absence for that party--

Mr. Chairman: Then Mr. Morin is the member from the governing party. Agreed.

Mr. Chairman: Mr. Philip is the member from the New Democratic Party, and I have been asked to represent the official opposition. One of our duties is to appoint a chairman. I understand the chairman should come from an opposition party. I think Mr. Philip should be the chairman of the committee.

Mr. Shymko: Except in an unusual circumstances.

Mr. Chairman: Does that meet with the approval of the committee? Agreed.

Mr. Chairman: That is fine. We are unanimous on that.

The next order of business is legal counsel's fees.

ORGANIZATION

Mr. Philip: Since the next matter will undoubtedly be a discussion of whether not we need an external counsel and so forth, it would be appropriate that we go in camera for item 3. That does not mean the Ombudsman is not present.

Mr. Chairman: Then it will not be recorded.

Mr. Philip: The committee members may feel freer to discuss things in camera when dealing with item 3.

Mr. Shymko: Do I understand this is related to counsel's salary?

Mr. Philip: We are talking about salaries. It is normal in most parliamentary and legislative bodies when we talk about personnel matters that only the decisions are reported and they will naturally be public. But members may want to express opinions and may feel free to do so.

Mr. Shymko: Simply for practical reasons, not to have the Hansard personnel leave and then come back again, could we not just finish off any discussions not deemed to be in camera. Can we not complete that and then deal with the in camera item at the end?

Mr. Philip: We could simply have recorded the decisions.

It would be useful for Eleanor to be present when we discuss item 4 unless she has pressing engagements. Even though we are dealing with item 3, we might move up. We are not going to be long on item 3, so if she would not mind staying around it would help.

Mr. Callahan: Does item 4 become an in camera matter?

Mr. Philip: It does not. It is just a matter of practicality in not keeping Hansard hanging around for something that is going to be recorded publicly anyway.

Mr. Chairman: Mr. Philip moves that in discussing item 3, legal counsel's fees, we go in camera.

Mr. Callahan: Before that, I would like to pursue that point. I know Mr. Philip said it was to let the Hansard reporter go, but if we were not to record the discussions surrounding committee travel we would be called to task by anyone examining the minutes of Hansard. If we suddenly decided for example, we were to go to Fiji to review the Ombudsman's--

Mr. Chairman: We have to have the approval of the Board of Internal Economy.

Mr. Callahan: I appreciate that.

Mr. Philip: It will be discussed openly anyway.

Mr. Callahan: As long as there is some--

Mr. Shymko: That is a cop-out. What if Bob Nixon asked me if we would be willing to support such a trip?

Mr. Chairman: Do you want to discuss committee travel?

Mr. Callahan: As long as it is reported at some stage in a public forum. That would be nice.

Mr. Philip: That will be done. You referred it.

Mr. Chairman: All in favour of Mr. Philip's motion? Those opposed?

Motion agreed to.

The committee continued in camera at 11:43 a.m.

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Government
Publications

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
TUESDAY, SEPTEMBER 3, 1985
Morning sitting



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Substitutions:

Callahan, R. V. (Brampton L) for Mr. Bossy
Hennessy, M. (Fort William PC) Mr. Shymko
Poirier, J. (Prescott-Russell L) for Mr. Newman

Clerk: Decker, T.

Staff:

Bell, J., Counsel
Madisso, M., Research Officer, Legislative Research Service

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman
Meslin, E., Executive Director
Zacks, M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, September 3, 1985

The committee met at 10:09 a.m. in room 151.

ANNUAL REPORT, OMBUDSMAN, 1984-85

Mr. Chairman: I see representatives from each party, and we will begin our meeting. I would like to call on Mr. Bell--I was going to say financial adviser--for a progress report.

Mr. Bell: Thank you, Mr. Chairman. I am only your financial adviser when I send you my bill.

Mr. Chairman: I noticed that.

Mr. Bell: Members, welcome this morning. I have a lot of good news for you before we begin the following matters.

First, can I introduce you to the materials we will be working with in the next two weeks. You should have before you two volumes of material, cleverly labelled volumes 1 and 2. We will be spending all of today with materials in volume 1 and particularly tab 1(a).

Initially, tab 1(a) contains an opening statement by Dr. Hill, and he will be starting with that in a few minutes. At the beginning of that volume you will see an agenda of this week's and next week's proceedings.

Those who were part of the July sessions we had, and particularly the briefing session I gave you in July, will remember that I had prepared a pro forma schedule which had 19 recommendation-denied cases on it. I am very pleased to report that as a result of what must have been a tremendous effort on the part of Dr. Hill and his staff and the concern of ministry and the board on the other side, those 19 cases reported as unresolved have now been reduced to four. The Ombudsman is trying hard to put us out of work; and that is as it should be.

At the end of July, I thought we would be hard pressed to complete our work in two weeks. There is no doubt we will complete our formal and public work no later than Tuesday of next week, barring a catastrophe. There will be ample time, therefore, to deliberate in camera on matters necessary for your next report to the House. That is some of the good news.

Other good news is that you will not hear very much from me today since Dr. Hill has a rather extensive opening statement to make which will cover a lot of the issues he raised in his report and which have been raised by you in your last report.

Just a further explanation of the briefs of material and the agenda, if you will turn to the agenda under the scheduled matters

for today, September 3, at 10 a.m., you will see a description of what we will be dealing with and then you will see some numbers afterwards. For example, tab items 1(a), 2(i), 2(ii), 2(v) and 2(vii). Those numbers correspond to the tab numbers in this report. If you want to test that, look at 1(a) and you will see the remarks by Dr. Hill. If you look at 2(i), you will see nothing at present, but at 2(ii) you will see certain statistical information that the Ombudsman and his staff have compiled for us. Dr. Hill and his people will be speaking to that later in the day. That is how it works.

Volume 2 contains the relevant documentation that you will want to consider for each of the remaining recommendation-denied cases. It also contains the case that was settled recently, number 6. You can leave that in because there will be some discussion of it with respect to the details of the settlement. The others remaining--specifically number 1, dealing with the Ministry of Consumer and Commercial Relations; number 3, dealing with the Liquor Licence Board of Ontario; and numbers 9 and 14, dealing with the Workers' Compensation Board--are there.

I will have a more detailed explanation of how this brief works before we begin our sitting tomorrow. Let me say briefly that at the beginning of each of the parts in that brief you will find a document described as a synopsis; that is, in effect, an agreed statement of facts of the relevant matters and issues between the Ombudsman and the specific ministry or board, as the case may be, as to the case. In other words, it is intended to set forth in a distilled but comprehensive way the issues and facts relevant to the Ombudsman's position with some analysis of how he came to his conclusions and recommendations; and, on the other side, its states facts and issues relevant to the ministry's or the governmental organization's position.

That document has a number of intents but, for our purposes this week, its intent is to serve as the basis for discussion among you, the Ombudsman and the governmental organization concerning their respective positions, etc. It is also intended as a means whereby you can be briefed in some detail on the particular cases.

It is impossible for you to have briefed yourselves before this morning, since the materials were ready and distributed only this morning. But those of you who wish to do so can do some advance reading before tomorrow morning, when we deal with a fairly detailed case. If any of these cases take more than half a day to address, tomorrow's will.

You can start reading the detailed summary, and then after that you can get into the specific documentation that follows. In particular, you should start to read for each of these cases the Ombudsman's report under subsection 22(3) of his act. That document is usually found towards the end of the materials. As I say, I will have more explanation of that tomorrow.

Whereas as of late Friday we had scheduled a recommendation-denied case for this afternoon, that is not so. What I have proposed, subject to your agreement, is that we not feel now the

pressure of only the morning sitting to deal with Dr. Hill and his staff on their matters but that we take some portion of the afternoon. I was not aware of the extensive nature of the statement, and I am sure there are things each member may wish to address with Dr. Hill. But once those items are completed today, I propose that the committee rise.

The same applies for tomorrow. Whereas in draft 4 of the schedule we had prepared you had specific work to do tomorrow afternoon, you no longer have the pressure now of doing each of these recommendation-denied cases in half a day. As I say, if any of these cases takes more than half a day, tomorrow's will. I predict frankly that, Parkinson's law notwithstanding, we will need some portion of the afternoon. When that work is concluded, I propose that we not start anything new, particularly since scheduling problems have prevented the Thursday 10 a.m. matter from starting before then.

10:20 a.m.

There is another issue, Mr. Chairman and members. It has been this committee's practice in the past that when it concludes considering a recommendation-denied case--in other words, when it is finished hearing from both sides--it immediately adjourns in camera with the individuals and parties waiting in the hall and attempts to reach a consensus of either yes, we support the Ombudsman's position or no, we do not.

If either of those positions can be reached by the committee privately, quickly, within half an hour to 45 minutes, the committee immediately goes back into public with the persons reattending and announces the position so that no time is lost. Nobody can leave the meeting that day not knowing what is expected of him and particularly the governmental organizations in cases where the Ombudsman's position has been supported.

Where the committee is unable to reach a consensus within that period of time, we adjourn that matter to whenever you deliberate for a longer period to conclude it and we so report that to the individuals. Because we have the luxury of only four of these cases, we have now ample time to do that.

I will now shut up, Mr. Chairman. I know you wish to formally introduce Dr. Hill and welcome him. Let me say, though, I cannot repeat too strongly how much Dr. Hill and his staff and the governmental organizations need be commended for reducing a work load of 19 cases down to four.

The committee has never had 19 cases on its agenda before, and it has never had only four to deal with going in. You would have been tired people at the end of the two-week period with 19 under your belt. Not that you are not going to be tired because we will work you fairly extensively, but with four you can appreciate the difference.

Mr. Chairman: Are there any questions of Mr. Bell before we proceed? If not, we will call on our Ombudsman, Dr. Hill, for his statement to the committee.

Dr. Hill: I did not mean to frighten you by the length of this statement I have put before you. I just happen to be the son of a Methodist preacher and a bit long-winded. However, you will note as I proceed in delivering this paper that a number of pages will not be read. There are tables and quotes and things of that nature that will not be read into the record. They will be there for your perusal and use later on. So it will be briefer than the number of pages before you as I make the statement.

Mr. Bell: Excuse me, Dr. Hill. I do not mean to interrupt, but could we wait for a moment to make sure that each of the members has located the statement? We took the liberty of putting it in the material before we started. It is in volume 1 at tab 1(a).

Dr. Hill: I welcome the opportunity to appear before you today. I believe our meetings are vital for the continuing success of this office. Let me say I was very pleased with our last meeting when you kindly accepted my invitation to convene at our office and hear from the senior members of my staff. I hope you share my feeling that in the course of those two days in July we set the stage for a very open and mutually helpful relationship between us.

As I stated at the time, mine is an open administration. I will endeavour to give you whatever information and assistance you may request. Your comments, criticisms and guidance will be welcomed and indeed valued.

Shortly we will be discussing those cases where the governmental organization refused to implement my recommendations. This will be our most important task. I am pleased to reiterate Mr. Bell's comments that we have knocked down quite a few of those cases and have resolved them.

In the resolution of these complaints that are left you are my final recourse or, if you will, the last arrow in the Ombudsman's quiver. However, you are a brand-new committee. Before I ask you to consider and support my recommendation-denied cases, I believe you have a right to know my conception of the role and function of the Ombudsman.

With your permission, I will now give you an overview of how I have approached my responsibilities, what we have done and what we hope to accomplish in the future. Much of what I say has been in my recent annual report. However, I believe it is important that it become an official part of the record of this committee.

I know you are aware that the Ombudsman is not only a function but also a person. The function of the Ombudsman is to investigate complaints against administrative decisions and acts of officials of the government of Ontario and its agencies. However, to this function every incumbent brings a personal legacy and a personal philosophy.

As a person who has spent much of his life working for human rights, I believe the role of the Ombudsman is an essential one. I believe the right to complain, the right to be heard and the right

to have corrective action taken if one has suffered from arbitrary and unfair governmental action are human rights.

I believe the Ombudsman Act is a link in the evolutionary chain of human rights legislation, dating back to the Magna Carta and culminating in our recently proclaimed Charter of Rights and Freedoms. A landmark event in the process was the United Nations Universal Declaration of Human Rights, of which Canada is a signatory, signing in 1948 in San Francisco.

As Ombudsman, my policy for this office will continue to reflect my commitment to human rights. For example, article 21 of the universal declaration includes the right of equal access to public service, and many other articles delineated in the universal declaration relate to the work of the Ombudsman. I will have for you later today copies of the United Nations Universal Declaration of Human Rights so, when you see those articles, you can see how it reflects, how it deals with and how it and impinges upon, directly and indirectly, the work of the Ombudsman. I will have my staff person give you the universal declaration later for your edification.

After I was sworn in as Ombudsman in March of 1984, I made it a priority to make this office as accessible as possible to all of Ontario. By that, I mean the new Ontario, multilingual, multiracial and multicultural.

My staffing policies for this office reflect this commitment. I am proud to say that my staff collectively speaks a total of 25 languages, running the gamut from Cree to Yiddish. In my view, if government is asking the private sector to be equal-opportunity employers, then it should set the example. It should lead the way and be a model employer in this regard.

As Ombudsman, one of the first problems I encountered was a public that was generally unaware of my office. It is ironic that the Ombudsman's sole purpose is to assist the public and yet such a small portion of the populations knows that the office exists.

To remedy this, I immediately created a communications and public education directorate to inform the various communities in Ontario about our services. Years ago, Mr. Maloney had such a directorate, but it did not exist for a while. However, he did start that and I will not take credit for having it as a new idea, because Mr. Maloney did start that in 1975. I just started it over again when I took over.

Some of our letters include the publication and wide distribution of a newsletter, Equal Times, which explains how we work and how to get in touch with us. Just as important, we now have internally a weekly bulletin regarding office news and views distributed to all staff. Facts sheets about our office are available in a dozen languages. Our annual report is published in both of Canada's official languages.

We have started a 24-hour, seven-days-a-week answering service at our Toronto location. It is necessary for the people to reach us, and we do not want people to feel they cannot get in

touch with us on the weekend, so we have a good and functioning answering service.

10:30 a.m.

Also, we have put into a service a mobile information display unit where a staff member is available to distribute information and receive complaints. This unit has been used in various locations across the province. Public meetings on the role and function of the Ombudsman, organized with local community and voluntary groups in locations where we do not have offices, is another ongoing program. We intend to have our next major public meeting in Windsor later in the fall.

We also make as much use as possible of the media. This includes public-service radio announcements, participating in open-line talk shows and community cable TV programs.

My own personal efforts include numerous speaking engagements and making myself available for interviews. Since the communications directorate was established, we have participated in more than 380 speaking engagements and 20 conferences and exhibits. Ultimately, my objective is to make our services better known to every resident of this province.

Access is largely a regional problem. As you know, many Ontario citizens live closer to the foothills of the Rockies than to Queen's Park, yet they are entitled to the same services citizens in the south enjoy. Further, we have a disproportionate number of complaints coming from citizens in northern Ontario. Ten per cent of our complaints come from the eight per cent of our population living in northern Ontario. For this reason, and to fulfil a commitment I made when I became Ombudsman, I recently opened district offices in Timmins and Kenora. These are in addition to our regional offices in Ottawa, North Bay and Thunder Bay.

I am also exploring further possibilities of expanding our services throughout the province, but I am deterred from creating additional regional offices by the cost of the infrastructure required to establish and maintain them.

As an alternative, I am seriously considering the idea of a resident local agent, or Ombudsman's representative who could, on a part-time basis, act as a liaison person in a number of communities across the province.

This is not a new idea. Newspapers have used what they call "stringers" very successfully. In this respect, I am heartened by the number of voluntary and public agencies who have offered us low-cost accommodation to locate in their communities if we go ahead with it. I must have received, in the last six or eight months, at least 10 or 15 offers from municipalities, mayors and other people, voluntary organizations, offering us facilities at very minimal cost in their communities. So we are looking at this as a means of utilizing the working out of the concept of the stringer.

I am determined that rural and northern Ontario be given the same services as those provided in other parts of the province.

In April 1984, I invited the member for Carleton East (Mr. Morin), the former director of regional services, and his staff to advise me on how this office might best serve the north, and I directed them to pay particular attention to the observations and suggestions made in the select committee's 11th report which followed its historic northern Ontario visit in January 1984.

One of the committee's observations in its 11th report was that the native people regard the Ombudsman's office in North Bay, for example, to be practically as remote from their communities as the office in Toronto.

I have followed up on that observation in a number of ways. Our Timmins and Kenora offices have large native populations in the area. Therefore, I felt the community would best be served by staff members who speak at least one native language. My district officer in Kenora speaks both English and Oji-Cree, the predominant language in that district. Since Timmins also has a large francophone population, my district officer there speaks fluent French and Cree, in addition to English.

I am pleased to report that both of these offices have already had a significant impact in their respective communities. Since the January opening, more than 400 complaints have been received by the Timmins office, and the number of complaints received at the Kenora office has exceeded 200 since the opening on April 1. There seems to be no diminution of those statistics or complaints that are coming in.

Also, in order to give all aboriginals an equal opportunity to utilize our office, I have appointed a native programs officer who is responsible for my outreach initiative to native communities. This was again to follow up the select committee's visit to the north in which it requested the Ombudsman to be far more active in the native community than he had been.

My intention is to eventually consult with all provincial aboriginal leaders--status, nonstatus, Metis and Inuit--and make contact with all the native organizations in Ontario. This program is now well under way.

In my recent annual report I discussed my intention to start a series of personal visits to establish contact with some of the more remote reserves in Ontario.

In the late fall or early winter, we will embark on a visit to the far north and meet with native communities and organizations in the very remote areas. This trip will be a milestone in the outreach program of this office, for it will afford an opportunity for us to see first hand the task that lies ahead in establishing a credible presence in remote communities that have been ignored for so long.

Let me now make a few general comments about my fiscal philosophy. As you have the responsibility to review my budget

submissions to the Board of Internal Economy, I want to assure this committee that I am absolutely intent on maintaining the most cost-effective operation possible. I believe the citizens of this province who fund this office deserve top value for their dollar.

In planning for the 1985-86 budget year, the first budget in which I personally had any real part, I was mindful of three commitments I made on taking office: (1), my commitment to improve staff management, staff morale and staff efficiency; (2), my commitment to expand service to the public, in particular in northern Ontario; and (3), the need to bring a sound system of fiscal control to the Office of the Ombudsman. There have been criticisms in the past in this area. I was fully aware of those criticisms when I took over as Ombudsman, and intended to immediately rectify them.

My estimates for the fiscal year 1985-86 were submitted to the Board of Internal Economy this June and shortly thereafter our office provided a copy of those estimates to the clerk of your committee. We were advised by your clerk that any consideration of those estimates is technically ultra vires until the House reconvenes and the Treasurer (Mr. Nixon) confers the necessary authority.

Under these circumstances, I will defer detailed comments about my estimates until you have had an opportunity to consider them later in the fall. However, I will say that I am committed to more constraints in the coming year. In short, I will be doing more with less and, I hope, more efficiently. Let me give you a few examples of what I mean.

10:40 a.m.

1. When our negotiations are finalized to sublet 1,900 square feet of our premises to the Public Complaints Commissioner, our office will save approximately \$29,000 annually in rent.

2. The leasing of our new data processing systems will cut our costs in half, from \$12,000 to \$6,000 per month.

3. Our switchover to the centrex 3 telephone system will result in a saving of \$17,160 per annum, effective October 1985. Once our office joins the Metro-wide centrex service of the government of Ontario, further savings are anticipated.

4. We will be reducing our travel accommodation costs by eliminating many of the higher-priced hotels from our Ministry of Government Services listing of Ontario hotels which provide government discounts. We will stay in reasonable hotels but not in the best.

I am also pleased to report to you that the Provincial Auditor's recent report on this office gave us a clean bill of health. The auditor's covering letter stated: "The current year's review of the Office of the Ombudsman's system of internal control and accounting procedures did not disclose any matters of significance to be reported on at this time." That is sort of a backhanded way of saying we are doing okay.

There is no dispute that better management results in better staff morale and higher productivity. In my recent annual report, I outlined the progress we have made in the management of this office.

We have organized the intake, investigative and legal functions into five policy field units. I am keenly aware of the need to cut down the amount of time it has traditionally taken in our office to investigate a case and this reorganization is attempting to do so--cut down the time for a case investigation. Eleanor Meslin, my executive director, will be talking about that more definitively later.

We have overhauled the statistical record-keeping functions of the office for the purpose of presenting more readable information that is more reflective of the work performed.

We have purchased and installed a new computerized data and word processing system. When that system is fully on line, even more detailed statistical analyses will be available for the benefit of your committee.

We have reorganized the word processing functions in the office and we are now achieving a 24-hour turnaround for word processing assignments.

We have introduced a salary classification system patterned after the Ontario civil service to achieve a more equitable salary structure. Shortly, a comprehensive grievance procedure will be introduced.

To enhance efficiency and effectiveness, our office has adopted the concept of managing by results. MBR involves the participation of all levels of management from the beginning of the budgetary planning process to accountability for achieving results.

In concert with these measure, we have introduced an equitable performance appraisal system based on MBR philosophy and also a staff training and development program for our entire organization.

I now believe this office is in basically good health. We have a competent staff in a streamlined organization. We have an adequate budget and a sound system of fiscal and management control.

More than 10 years have elapsed since the Ombudsman Act was pass in this province. During those years, I believe the Office of the Ombudsman has established itself as an authentic agent for administrative justice for the people of Ontario. However, we cannot rest on our laurels. As we enter our second decade, many challenges lie ahead; challenges our office cannot effectively address without your assistance and your help.

For one, as you are aware, this office has reached an impasse in the resolution of certain complaints against the Workers' Compensation Board. I will reserve my comments on the

systemic problems I have identified in my annual report until the time set aside on our agenda later in the week.

There are other areas where I am concerned about possible systemic problems. Specifically, these involve overcrowding in correctional facilities, health care in nursing home, and the housing of native people in certain parts of Ontario. In addition, in 1980, the justice committee produced a report which contained 119 recommendations on how to improve the Ontario Housing Corp. I intend to study this report very closely and I will be consulting on it later. I am currently considering how I will proceed on all these matters, and you will certainly be informed of my efforts.

For another, I believe the time to implement amendments to the Ombudsman Act is long overdue. Your predecessor, the select committee on the Ombudsman, supported the package of amendments prepared by my predecessor more than five years ago and submitted to the then Attorney General for his consideration.

When I became Ombudsman, I reviewed those amendments and added several more which I considered to be of supreme importance to the better functioning of the Office of the Ombudsman. The effect of some of these amendment would permit the Ombudsman more effectively to perform his investigative function for the benefit of the people of Ontario.

However, as many who have dealt with my office know, the Ombudsman Act currently imposes a duty of secrecy that somewhat prevents me from publicly commenting on these and other matters. One of my most important amendments will allow me to make special reports to the Legislature or to comment publicly on matters about my responsibility or investigations when I believe it is in the public's interest to know.

Another of my major concerns is the lack of public awareness and understanding about the Office of the Ombudsman. For the citizen to use the Ombudsman, the citizen simply must know about him. I have made a start in increasing the level of public awareness and knowledge through my education programs, but much more must be done.

Regrettably, the Ombudsman Act does not address this critical need of public education. One of my proposed amendments will remedy this. It will make the Ombudsman legislatively responsible for providing and conducting programs of public information and education.

Another amendment involves financial compensation. From time to time the only way of rectifying a wrong done to a citizen is to pay him or her money. There are some situations where the government is willing to pay but is unable to do so because it lacks the necessary statutory authority. Through the co-operative efforts of the select committee on the Ombudsman and the Treasurer, an amendment was agreed upon that would permit the payment of money where no other legal authority was available. This important amendment will allow the Ombudsman and the government to give full effect to recommendations where money should be paid to correct an injustice.

In mid-August a committee from our office met a counterpart in the Attorney General's office and a basic agreement was reached on a package of amendments. The majority of the amendments are simply housekeeping. However, two or three of the substantive ones need more discussion. After our discussions with the Attorney General (Mr. Scott) are completed, your committee will receive the whole package of proposed amendments in the fall, I hope.

I am hopeful, as well, that your committee will support these amendments and use its good offices to speed their passage and thus permit me more effectively to perform my investigative function.

Finally, as this office enters its second decade, I believe it is an appropriate time to consider whether or not other areas of governmental activity should be the subject of the Ombudsman's investigative responsibility.

In my annual report I made the statement that I would not ask the Legislature and the public to expand the Ombudsman's jurisdiction in other areas of governmental activity until a process of full and frank discussion has been completed and a consensus has been reached about the utility of such an expansion. I repeat that statement because a misconception emerged that I simply wanted more power. That is just not the case. But I do feel I can no longer ignore the demands on our office for added services--services that we have not looked at in 10 years. What I do want is more advice and a structured forum for a full discussion of the issue.

10:50 a.m.

Certainly a case can be made for expanding the Ombudsman's jurisdiction. During the last 10 years our office has received hundreds of complaints about the actions and decisions of municipalities, public hospitals, universities, conservation authorities, children's aid societies, farm products marketing boards and the Ontario new home warranty program. These are all bodies that receive major provincial funding or are under various degrees of regulatory control by the province but are not within the jurisdiction of the Ombudsman. My predecessors have considered their jurisdiction over these agencies and concluded that they were not subject to the Ombudsman's investigative authority.

As you know, the Ombudsman's jurisdiction is circumscribed by subsection 15(1) of the Ombudsman Act, which gives authority "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization." "Governmental organization" is interpreted to mean a ministry, commission, board or other administrative unit of the government of Ontario and includes any agency thereof.

As you are well aware from your constituency work, the technicalities of jurisdiction are usually the last things on people's minds when they need help. They are hurting and they want help, irrespective of whether it is a municipal, federal or

provincial matter. All they know is that they have a problem. When they get shuffled around from one jurisdiction to the other, it becomes most discouraging.

Citizens who have complained to this office about the organizations I have mentioned have been referred elsewhere, often with great reluctance by our staff because of our commitment and desire to help all Ontario residents who seek our assistance. Often there is no really adequate referral available. For example, a complaint against a university in Ontario might be referred to the university ombudsman, but of the 15 universities in the province, only two have ombudsmen.

We do have jurisdiction over all community colleges, so we hear complaints from them. The question might logically be asked: "Why not look at the universities' structure? They are similarly funded, just about, and they are primarily funded by the province of Ontario." We do have jurisdiction over community colleges. We hear a number of complaints about people and practices in community colleges and we handle them.

Another example might involve the historical malaise between native organizations and children's aid societies. A complaint from a native citizen or group against one of Ontario's 50 children's aid societies might be referred to the Ministry of Community and Social Services. The Ombudsman has the jurisdiction to investigate the adequacy of the ministry's investigation, but would not be able to comment on the actual merits of the case.

Aside from children's aid societies, let me add that there are 838 municipalities, 220 hospitals, 39 conservation authorities, 24 farm products marketing boards and the Ontario new home warranty program that are completely outside the powers of the Ombudsman.

For your information, I have appended a survey of Canadian and selected United States ombudsmen and their jurisdiction over municipalities, public hospitals, universities, children's aid societies and conservation authorities. You will notice that Ontario is exceptional in that the Ombudsman has no jurisdiction in any of these areas.

You will see the tables; I will not read from them. You will see the explanatory notes in the next four or five pages. You will see what other jurisdictions do. My staff prepared this on a research basis, and you will see that many of them have that jurisdiction. Nova Scotia has jurisdiction over municipalities, for example. The American ombudsmen have the jurisdiction, and it is something you may want to consider very carefully. The research material ends and I start again on page 34.

For your information, I am also presenting a statistical table of the numbers of complaints received against municipalities, children's aid societies, hospitals, conservation authorities and universities by our office in the last five fiscal years.

I have just a very brief comment on the chart that says Nonjurisdictional Complaints Received. Just in terms of municipalities, in 1980 and 1981 we received 257 complaints against municipalities. By 1984-85 and 1983-84 that had jumped to 787 complaints. In the table just a little lower, in 1984-85, are 771 complaints against municipalities. There is a sharp rise in nonjurisdictional complaints in respect of municipalities.

Municipal complaints aside, the present trend of complaints in these areas would not suggest that a very large increase to our resources would be necessary to keep the work load manageable. However, I must admit that this is simply conjecture.

The question of municipal jurisdiction is a more difficult one. This matter has been the subject of debate since the late 1960s consequent upon the recommendation of the Honourable James C. McRuer, who was commissioned by the province to conduct an inquiry into civil rights in Ontario. One of the recommendations of Justice McRuer's monumental report was the creation of the Ombudsman for municipal concerns. In the actual legislative debate of the Ombudsman Act in 1975, four members addressed the issue of municipal jurisdiction. I include their comments from Hansard for your perusal.

You can go to page 39. On the pages in between are all the comments of legislators who had things to say about this whole question of municipal jurisdiction.

Certainly the extension of the Ombudsman's jurisdiction to municipalities would have a very significant impact on this office and would require a major increase in resources. In this area, I believe it would be proper to restrict the Ombudsman's jurisdiction to administrative decisions and exclude the actions of municipal councils. That would be consistent with our tradition of elected officials not being accountable to appointed ones. However, at this stage such a discussion is hypothetical.

What I believe is timely is a good hard look at the whole issue of expanded jurisdiction. I believe the most appropriate forum for such a study is a committee of the Legislature, ideally your committee, this standing committee.

On the issue of municipal jurisdiction, let me inform you that on August 14 of this year, the Minister of Municipal Affairs for Quebec called for discussions among all of Quebec's 1,200 municipal secretary-treasurers to advise him of the feasibility of creating a municipal ombudsman post for the province. The minister was following up on a proposal made by the Quebec Ombudsman during the Canadian Ombudsman Conference held in Quebec City last May.

In our province, a survey of municipal officials on this issue may well be a valuable initial step to obtain information. You and your committee are in a position to set your own procedures, to feel the pulse of this province, to get the necessary public input to assist in your deliberations. Should you consider it appropriate to conduct such a project, our resources, our staff and our office would, of course, be made fully available to you.

For our part, I can say our office is ready to accept any mandate to increase and improve our service to the public.

At this time, I will also address three other matters that are outstanding from the past fiscal year. One concerns the 12th report of the select committee on the Ombudsman. The second concerns the creation of a federal ombudsman. The third deals with the jurisdictional challenge of the Ontario Labour Relations Board.

With respect to the 12th report, I am pleased that the select committee expressed its confidence in the ability of my office to work productively with that committee. However, there seemed to be some misunderstanding about my intent "to foster a climate of mediation and conciliation with the ministries," an approach I used when I was director and chairman of the Ontario Human Rights Commission. The committee expressed concern that I might apply the styles of mediation and conciliation to every aspect of my functions and suggested that the roles of the chairman of the Ontario Human Rights Commission and the Ombudsman of the province are not truly analogous.

Let me assure this committee that such a concern is unwarranted. The function of the Ombudsman is clearly stated in subsection 15(1) of the Ombudsman Act, that is, "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity."

11 a.m.

The function of the chairman of the Ontario Human Rights Commission is to administer the Ontario Human Rights Code. The Ontario Human Rights Commission is a governmental organization; therefore, the decisions of the chairman are subject to the scrutiny of the Ombudsman. Although our functions are different, I believe, in the broad sense, the roles of the Ombudsman and the chairman of the commission are truly analogous, namely, to achieve justice for aggrieved citizens.

In my view, justice itself is non-negotiable. However, there are many ways and means available to achieve justice. Subsection 16(3) of the Ombudsman Act states that "the Ombudsman may determine his procedures" subject only to the act and any general rules the assembly may make for the guidance of the Ombudsman under the act. Mediation and conciliation are not excluded as procedures available to the Ombudsman. This is exactly what I use in bringing down the number of cases with respect to the Workers' Compensation Board and other ministries.

The select committee was correct in its observation that once the Ombudsman's investigation has been completed and he formulates a conclusion and recommendation which support the complainant, he becomes the representative of that complainant in his dealings with the governmental organization, the Office of the Premier and, lastly, the committee. The committee might have added that in those cases where the Ombudsman finds the complaint

unsubstantiated, the Ombudsman assumes the role of advocate for the position of the governmental organization.

Before the Ombudsman's investigation has been completed, there are often occasions where the techniques of mediation and conciliation can be invaluable to achieve justice. In no circumstances would I permit the rights of an individual to be abused, abridged or abrogated and the merits of a case to be compromised by adopting the role of mediator/conciliator. But if equity could be better achieved by adopting such a role prior to the conclusion of my investigation, I simply will not hesitate to do so.

I fully agree with the committee's observation that "any approach which relieves atmospheres of confrontation and tension is a welcome addition." Frankly, I believe in talking to people, meeting with them and writing fewer letters. That is the approach I have been trying to initiate.

As I have stated in my annual report, senior members of my staff have met regularly with senior officials of the Ministry of Correctional Services during the past year to resolve worthy cases before I issue a final report. This method has proved very successful in coming to agreement in cases dealing with issues such as advising inmates who have lost the right to earn remission of their rights of appeal and the right of inmates to be paid interest on money held for them by the ministry. It is my intention to introduce this procedure with other ministries in the near future.

Another matter I wish to mention is the issue of a federal ombudsman, because it seriously affects our operation. I forget the exact percentage my executive director told me, but many of our nonjurisdictional complaints deal with federal matters.

I am pleased to report a recent development. On August 20, I delivered a paper at the Canadian Bar Association conference in Halifax, calling for the creation of a federal ombudsman. Immediately afterward, the Canadian Bar Association council unanimously passed a resolution urging the immediate creation of an ombudsman at the federal level.

As you may recall, the Canadian Bar Association's 1964 resolution calling for an Ontario Ombudsman was one of the major precipitating factors in the creation of our office. I am very hopeful that history will repeat itself in this important matter.

Finally, let me update you on the status of the Ontario Labour Relations Board's challenge to our jurisdiction. On August 28, our application for a declaratory order to determine this issue was heard in Divisional Court. Judgement has been deferred, and I will advise you when the outcome is known.

Gentlemen, we share the same goal: to maintain the most effective and efficient Ombudsman's office that is possible, an office that will truly serve the people of this great province. I look forward to working with you to achieve this goal.

Mr. Philip: Dr. Hill, there are a number of issues here which we discussed in our meeting with you in your offices. I am pleased to see that a number of changes have come about under your jurisdiction as the new Ombudsman, which were chiefly criticisms of the previous acting Ombudsman.

I would like to discuss in more detail page 19, the organization of the intake, investigation and legal functions into five policy field units and the way in which you have been able to cut down the time it takes to investigate a case. This was a major criticism of the committee in the past, that justice deferred for long periods of time is often justice denied. I wonder if Mrs. Meslin would care to bring the committee up to date as to the turnaround time and how this is now operating.

Mrs. Meslin: Perhaps you might wait until after the statement I am going to make, unless you want me to go through it now. Would you like the response now, or do you want to wait?

Mr. Philip: We can wait.

You mentioned the systemic problems, which is an important addition to what you are doing that the other ombudsmen were not really involved in. I notice one of the areas that is missing on page 22 is Ontario Housing Corp. It will come as no surprise to you that I have been fairly critical of the systemic problems existing in that agency. I am wondering if that is on your short list or your long list to investigate for systemic problems.

Dr. Hill: I noticed that omission in your copy. In my copy, in the third paragraph of page 22, I have made an addendum. This is off the top of my head and I will read it again: "In addition, in 1980, the justice committee produced a report which contained 119 recommendations on improving Ontario Housing Corp. I intend to look at this report more closely." I am sorry it was not in the original copy. We have that report before us and we are studying it now.

Mr. Philip: I am sure you would receive the co-operation of the committee. I chaired that investigation and we found a number of major problems in OHC. The researcher for this committee is the same researcher who worked for the justice committee at that time, and I am sure we would be happy to work with you on analysing the major problems in OHC, because there are major examples of injustice being created by that agency against battered women and a number of other people who are residents in those projects, not to mention that it is grossly inefficient at times.

When you talk about special reports, are you thinking of the same way the Provincial Auditor does special reports on systemic analysis of particular agencies? Is that the kind of thing you are talking about?

Dr. Hill: I want that option open to me. If I see a social problem of serious and major significance to the Ombudsman's office reflecting in our case load and in our work for that ministry or whatever, I would like the opportunity to issue a special report on that matter and a public report on it.

Mr. Philip: Do you see a need for taking certain ministries or certain agencies on a systematic basis and going into those in the way the Provincial Auditor would do, to examine whether there are systemic problems from the point of view of human rights?

11:10 a.m.

Dr. Hill: I do. In a way, I am a bit worried because I do not want ministries, the government or the agencies to feel I am on a fishing expedition. There is a very delicate line, but where there are obvious illustrations and obvious problems that impinge upon the Office of the Ombudsman, I would like to use those as a jumping-off place instead of saying, "At this time of year, I am getting ready to look at this ministry" or "At this time of year, I am going to get into that ministry" or whatever. I should only do that when I have the information coming to me that is reflected in the case load and in problems with the office. I would like to use that as more or less the basis for any special report or any special investigation.

I do not want to go systematically. Lord knows, I am busy enough doing the other things I am trying to do administratively. I would not like to go on a routine examination of ministries. I do not think I should do that, but I do think I should do it where it impinges on the work of the Ombudsman.

Mr. Philip: On page 25, you talk about the educational role. Do you see that largely as informing the public of the role of the Ombudsman and the service that is available through the Ombudsman? Do you see it more expanded in the way in which some legal aid clinics perhaps have worked their way into providing educational courses for people on the kinds of assistance they can get through other people who play a quasi-ombudsman type of role in our society?

Dr. Hill: It would be helpful. I look upon it as working with two sectors, governmental organizations such as the Ontario Human Rights Commission and legal aid and other agencies, in joint educational programs where we help each other. For example, I want to see our material and literature in the offices of legal aid and the Ontario Human Rights Commission; I want to work jointly with them on educational programs.

I do not want to simply sit down at a conference and explain the role of the Ombudsman. I know that has to be done, but I want to work with government agencies in producing educational programs and working out educational programs, especially with the Ontario Human Rights Commission. As significant, I also want to work with volunteer organizations in a community to let them have some input on the educational work of the Ombudsman's office.

Too frequently, government organizations have a tendency to lecture to private organizations and the voluntary groups and tell them what we do, what they should do and things of this nature. I want to reverse that. Whenever I have educational conferences, I would like to see local communities assist us in organizing the conference, in setting it up, setting the agenda and having the speakers. In other words, they must be equal participants.

If you are going to have an effective community program, the voluntary sector has to have equal input as well as the commissions, boards and tribunals that have been working with us before. That it is a new partnership I am working at here. We are experimenting with it. We are trying to work on it.

In Windsor we are going to operate that way when we have our conference in November or December. We are going to ask for voluntary participation in organizing it. We are going to ask the labour, business and religious organizations to help us. It is a new thing we are experimenting with. I hope it departs from the traditional lecture conference forum, which is not effective when you are doing community work.

Mr. Philip: One of the complaints against the former Ombudsman, which you have talked about, was the lack of any kind of grievance procedure within the Office of the Ombudsman. I forget which page it is on, but you say a procedure will be adopted soon. What does "soon" mean and when will it be in place?

Dr. Hill: I made the statement that I intend to bring it in, and that is irreversible. The problem is that it is a complex thing; it is far more complex than I thought originally. There is not a single Ombudsman office that I know of that has a grievance procedure, in Canada or any place else. I have no precedent. I have called the other offices. They do not have a grievance procedure; their Ombudsman is the end of the line. I am not saying this is good or bad, but I could not go back and find out what other offices do and how they handle grievances.

The staff has given me a report. I have now gone through certain labour arbitrators and other arbitrators to get their opinion on how that procedure should be brought in, how it should be devised. The staff made a submission to me and I am looking at it, but there will be some revisions to it.

It is my intention to have that procedure in place before the end of the fiscal year, Mr. Philip.

Mr. Philip: You talk about management by objectives or management by results. I would imagine that by implementing that you would eliminate the probability of a lot of grievances in the first place, would you not?

Dr. Hill: I would hope so. That is a hope, but people who want to grieve are going to do so, irrespective of management by results. Mrs. Meslin may want to comment on that.

Mrs. Meslin: That does not overrule or override the necessity for a grievance procedure. Employees have other matters that need the grievance procedure to be heard. Although having a good management-by-results process will assist us and assist employees in understanding what results are expected, we still need a grievance procedure.

Mr. Philip: When you speak of management by results, I take it that in no way includes a system of merit pay, which has been such an abominable failure in other jurisdictions.

Mrs. Meslin: The management-by-results process is far more a procedural thing in terms of work results expectations. It does not relate directly; it is a tool to help with making decisions in the area of performance appraisals, but it is only a tool.

Mr. Philip: You talk about other responsibilities. I am wondering if you think that privacy legislation and freedom of information legislation might have been handled more appropriately by having one Ombudsman, namely, yourself, as the arbitrator rather than setting up a--let me go at it in perhaps a more diplomatic way.

Would you agree that in all jurisdictions the setting up of multiple ombudsmen has proven to be less efficient than setting up one ombudsman's office that is able to take care of problems within that governmental jurisdiction? In other words, it is not productive to have a multiplicity of ombudsmen as the federal government has with a language commissioner and a military commissioner, and other jurisdictions have made similar errors; it is better to have one ombudsman with a number of divisions than a multiplicity of ombudsmen.

Dr. Hill: I am not positive. I look at the European ombudsmen. There are many federal states and jurisdictions in Europe that have multiple ombudsmen, and in some cases they seem to be working okay. The system seems to be working all right. It does not mean it would work all right in Canada.

It is a question of weighing: Do you want one major bureaucracy or a whole system of little bureaucracies? I will be very frank, there are some dangers in both systems and I am still weighing them. I am still trying to decide on that issue. I have not decided and am still studying it.

I can see the value of one ombudsman covering everything federally and provincially. I can see also the argument by municipalities for a municipal ombudsman. I am just not convinced I have an answer that one or the other is better.

Mr. Philip: Is it not very confusing for Joe Blow Public, who goes to the Ombudsman and is told he has to go to another ombudsman or a different commissioner?

Dr. Hill: Sure. It could be confusing. It depends on how it is set up, but yes, it could be.

Mr. Philip: Would you agree that as far as cost-effectiveness is concerned, some ombudsmen in some jurisdictions may not make too much sense? For example, the Privacy Commissioner of Canada has very few cases. What is the case load of the Information Commissioner of Canada?

Dr. Hill: I cannot remember the exact number but it is fairly small.

Mr. Philip: Would you agree that if a freedom of information act were passed here, the number of complaints in that area also probably would be proportionately small?

11:20 a.m.

Dr. Hill: It depends on the stature of this office and how it is viewed by the public. I am bit reluctant to try to come down with a definitive answer because we have been affected by the fact that in the past year we have had horrendous and in some cases splendid changes in the office, but they have been enormous in terms of the work load. I guess I am a little hesitant because I would have to consider the fact that we would get another major area on top of that.

I am not shy of it, but I am thinking about it very carefully before I say, "That is a great idea; drop it in our area." It might involve considerable additional staffing or additional work, and I would want to think about it very carefully.

Mr. Philip: I will not ask you my final supplementary, which was whether you agree that it might be better to have the Freedom of Information Act under you than under separate commissioners. I will save you from that.

Dr. Hill: That is a tough one for me to answer today. I would not shy from it as quickly there, but I would want to think about it a hell of a lot.

Mr. Philip: Of all the expanded areas you have mentioned--children's aid societies, farm products, farm marketing boards, the Ontario new home warranty program, public hospitals, and universities--which one would you say would have the greatest need? Do you have any system under which you would rank your priorities if the government were to phase in your authority? Where do you see the greatest need to expand your authority first?

Dr. Hill: I guess it is a question of values. If as I have been I am considering the problem of native people, for example, which has been one of my priorities, I might say to you I am very interested in the whole question of children's aid societies and native people. That is one area. That is not as large an area as the question of municipalities and all the things that take place there, but the people who are hurting more are the people in northern Ontario, the native people, with respect to this whole question of children's aid societies.

I might turn around then and say universities. We have community colleges. I set up the ombudsman program at the University of Toronto, and I know how effective and helpful it was, but there are no other ombudsmen, other than one other in universities, and there are a lot of problems, a lot of complaints, involving students, faculty and others. The ombudsman system at the University of Toronto is working well and is badly needed in other places.

I would be in a conflict. I would say I might put the universities as number three on my priority. In terms of dire need, I would say native people and children's aid societies.

Mr. Philip: I would love to explore later examples of the types of complaints you get in those nonjurisdictional areas

where we get some grasp of it, but I will not take up the committee's time at the moment. I will give the floor to some other member, with the right to come back and ask some questions later on.

Mr. Bell: Mr. Chairman, before the next member asks his questions, I remind everybody that in so far as the issues raised by Dr. Hill as to amendments to the act and expansion of his jurisdiction are concerned, you have set aside the greater part of half a day, if not a day, next week, specifically Tuesday, to discuss that in more detail. The issues are such that I think some reflection is required by all concerned before getting into the real substance. I am sure Mr. Philip has more questions than the preliminary ones he just asked. With a couple of exceptions, when it becomes my turn this morning, I am going to defer those areas until next Tuesday.

Mr. Chairman: Any further questions?

Mr. Hennessy: You mentioned Timmins and Kenora. Would it be possible to give me an estimate for the city of Thunder Bay of how many cases you have and how many cases were resolved? Could you give us sort of a score sheet in regards to what happened and the percentage of the cases you solved in that area?

Dr. Hill: I do not have it at my fingertips, but I can provide you with that shortly. I have not got it here, but Mrs. Meslin has made a note of it and we will get that information to you.

Mr. Hennessy: There are a few cases where people reach a standstill and they come to my office and then go to another area. Eventually we tell them to go to the Ombudsman's office, and then perhaps we do not hear back from the people any more. I would be very interested to know whether the cases were resolved or what is happening at that time.

If I could get that necessary information, it would be helpful. The city of Thunder Bay has a population of 113,000 and therefore it is almost half of northwestern Ontario's total population of 250,000. Maybe it is more, because a lot of people come from Nipigon and the surrounding area of Schreiber or Geraldton into Thunder Bay to make their complaint. Then you do not hear anything more about it. I am concerned in that area.

Dr. Hill: Since I have taken over as Ombudsman, I have requested that my staff reply to the public with respect to any correspondence we receive and I want the reply ready to go out within five days.

Mr. Hennessy: Would it be possible for your staff to notify the local member? Mr. Foulds and I may be interested in a case to know what has been done with it. Sometimes it comes to us and our work load does keep on getting larger and the first thing you know we forget. It would be interesting to know how people come out with some of the problems they have.

Mrs. Meslin: If you have referred a case to us, we

generally keep you apprised of what has happened. If that is not happening, we would like to know about it.

Mr. Hennessy: I would appreciate getting the score sheet in regard to what is served.

Mr. Philip: The member is asking you to inform him of all cases in his riding boundaries. I think it would be contrary to the privacy of the individual to have anyone informed, even his own MPP, unless he so requested.

Mrs. Meslin: We can give him totals of how many cases come into Thunder Bay, without disclosing the names.

Mr. Zacks: We cannot disclose the names. When we take complaints we ask the complainants, who usually come of their own volition, whether they would like their MPP informed or kept informed of the process or the investigation. If they say, "Yes," it is checked off on the complaint form we keep in the file and as a practice we try to do that. Sometimes they will say, "Definitely not," and we will not do it. If it is referred by an MPP, he is kept informed.

Mr. Hennessy: I am concerned that if I do get a case and I know it is at a dead end and feel the only place to get it solved is the Ombudsman's office, then once it leaves my office sometimes I do not hear. Unless things keep on occurring, I do not follow it up because I feel it is in safe hands at the Ombudsman's office and I can no longer do anything about it when it has reached that stage.

I am not interested in knowing about every case. I have enough work as it is without looking for more. Some of these cases would not concern my riding anyway and therefore would be out of my jurisdiction. I am concerned about the few that do go to your office and I do not hear what happened to the case. As a member, when they come to my office and it is in my riding, I am entitled to know what happens to the case.

Dr. Hill: You should be hearing, yes. We will have to look at that one.

Mr. Zacks: You should be hearing unless the complainant does not tell us you have sent him. If you would send us a letter, if it is a practice of constituency offices to write or telephone that they are sending someone over and to keep them informed, we would do that. Unfortunately, some complainants do not let us know their MPP is involved in the matter.

Mr. Hennessy: Any member here would know you do get a lot of cases in your office and they have been to seven other people before coming to you but they do not let you know they have because they have a "no" answer and they are coming to you looking for that "yes" answer. A lot of times you do not know about it.

Dr. Hill: We will talk to Mr. Dunnill from the Thunder Bay office and look into that whole matter and make sure you get the proper response. I can assure you of that.

11:30 a.m.

Mr. Sheppard: Dr. Hill, we all have a lot of workers' compensation cases. When anybody comes into my office and we have to write correspondence, usually the people in the WCB office get back to us and give us the results. That goes in a confidential file. I have referred a number of people to the Ombudsman's office. Only once or twice have I ever got any replies back on the results.

Following along with what Mr. Hennessy said, I am wondering if we could not be treated the same way. Any time we sent a letter to the Ombudsman, would it be possible to get the results back? I know there are a lot of WCB cases in my riding which do not come to the member. They try to solve it themselves. The only cases we get are the ones they cannot solve themselves. I think we would like to get a follow-up. As Mr. Hennessy says, we are not concerned, we have done all we can do, yet we would just like to know the results.

Dr. Hill: If you have referred a matter to us, as a courtesy I certainly acknowledge you should be receiving a follow-up as to what has happened, and I have instructed my staff to do so. If that is not happening, I will find out why.

Mr. Sheppard: I cannot say at present, because I think I wrote a couple of letters in the last four to six weeks. I presume I will be getting letters back.

Dr. Hill: If you write a letter to us regarding a constituent, a person with a problem, it is our practice always to answer, to respond and to tell you what happened. We will have to check up on it, that is all.

Mr. Sheppard: To follow up on something Mr. Philip touched on, you said that of 15 universities in Ontario, only two had their own ombudsman. Do you think it is necessary that each university should have its own ombudsman, when we have one Ombudsman for the province? Do you think if each university had an ombudsman, it would make your problems less?

Dr. Hill: As you know, we do not have jurisdiction over universities at all with regard to the whole question of an ombudsman. I can only say that I watch the ombudsmen in universities, at Concordia University and the University of Toronto, work very effectively. I was involved in that before I even started coming back to government to work as Ombudsman. It worked very effectively and very well. I have seen the reports. I have seen the things they have handled. I have seen the way they function.

I know other universities, although I cannot give you the number, have had a number of problems that might have been effectively resolved with a university ombudsman. With the proper resources, I am prepared to look at that and take on that function. That would be good. On the other hand, and this is what has to be debated, has to be discussed, the universities might say: "Stay out of our hair. We can handle our own problems." In

fact, one university person did tell me, "Look, we can have our own ombudsman." I said, "Why do you not have one yet?" He said, "It is just that we are still thinking about it." So some of them say they can handle their own problems, but we are quite prepared, if that jurisdiction is handed to us, to take it over.

Mr. Sheppard: I am surprised they would say that. I was looking for the comment that, if they had enough money, they would all have their own ombudsman.

On page 32, you mention children's aid societies, 838 municipalities, 220 hospitals, 39 conservation authorities, 24 farm products marketing boards, and the Ontario new home warranty program. If you were to take on all this extra responsibility, your staff would almost have to be doubled, would it not?

Dr. Hill: We are not sure. In respect of municipalities, there might have to be a major increase. That is really a big jump. We are not certain there would be that much significantly additional staff if we took on other jurisdictions. Our staff tell me that, from informal and nonjurisdictional complaints and so on, there may not be a major jump. If we took on the municipalities, you must realize there would be a major concern. With the others, I am not convinced there would be a major increase in our work load. The work would be covered and the public would be covered.

Mr. Sheppard: There was one other point of interest I wanted to raise, and that was the number of people in Ontario who do not know anything about the Ombudsman. I think we discussed it when we were in your office in July. I have been thinking about it since then. No matter how much advertising you do and how many letters you send out to every board, I think it is going to take time for people across Ontario to be educated to the fact that an Ontario Ombudsman exists. I think, and I am sure you think the same way, it is going to be a matter of time before the people learn about it.

You mentioned several new offices that you would like to see start up in Ontario. Have you thought about adding any to the ones you mentioned today or the ones you mentioned in July?

Dr. Hill: I mentioned in my speech the fact that it is in many ways cost-prohibitive to go around the province setting up regional offices. I just cannot do it. I am going to have a big battle with government and I am going to have a battle with everyone if I try to set up 10 regional offices, so I am trying to think of palatable alternatives.

One is the concept, which I mentioned, of the stringer, the newspaper concept whereby you use a local community person on a part-time basis to work for the Ombudsman and handle matters for us on that basis. We are looking at that very closely as an alternative to setting up new structures with a costly administration to deal with them.

I think we may have to look in southwestern Ontario. We have nothing in Windsor; we have nothing in London. I have a priority on the north. The first thing I said when I came here was that I

wanted to do something in the north because they desperately needed it. You have to have some priority, and I felt the north was a priority.

I am also looking at southwestern Ontario. People in London have written to me a number of times and said, "We have no service here." People in Windsor have said the same thing. What are you going to do about Sarnia, Amherstburg, Chatham and that whole area? They have all written to me. It may be that the concept of the stringer will be a way to handle that without costing much money.

Mr. Sheppard: I have one other question. Now that there are not quite 125 constituency offices in Ontario--I understand two or three members do not have one--would you ask this of some of your staff who have been with the Ombudsman's office for 10 years: do the constituency offices across the province more or less act as and run as an Ontario Ombudsman's office in trying to get the information to your office?

In the last five years there seem to be more people coming in and I am directing more people to phone or to write to your office. I just wonder whether all the constituency offices see the same thing happening.

Dr. Hill: I can say we are seeing an increase in the use of our office by the constituency offices. There is no question. I cannot give you the exact number, but I am getting more letters from members of the Legislature and I am getting more requests.

In your way you are ombudsmen. After all, you are members of the Legislature and you are serving. We work together; we supplement and complement each other, and that is the way I hope it will continue. Therefore, because of what I feel is a good working relationship between the members and my office, we are seeing a steady increase in referrals to our office from yours, and that is great.

Mr. Chairman: Any more questions? If not, Mr. Bell.

Mr. Bell: Dr. Hill, may I just deal with these issues numerically as they appear in your statement? I raise most of them more for the purpose of generating some discussion and thought than for any other purpose.

First, the committee is indebted to you for setting forth in such a comprehensive way very important matters of your philosophy concerning the office, the role it should perform and the extent of the role that is to be performed in Ontario.

At page 3, you zero in on an issue this committee has dealt with since the beginning. Perhaps we should discuss it again when we talk about expansion of jurisdiction or amendments to your act. You set out in the second paragraph what you believe to be the function of the Ombudsman and you have limited it to the investigative functions.

11:40 a.m.

You know that historically the committee has had to push and pull with your predecessors. Your predecessors have come before the committee and said, "Our only function is to investigate and, therefore, your only jurisdiction over this office is as to that function," and they cite the general rules or section.

The committee has come back and said: "Nonsense. You have more than one function. If your function was only to investigate, you would not have an awful lot to do after you investigated and it would remove what some believe to be your most important function, the ability to take matters to the Legislature to seek support," etc.

I ask you to comment, sir. It is relevant when we get into the area of amendments. Do you see that the current act gives you only one function? If you do, do you believe you should have more than one?

Dr. Hill: I read the current act as giving me just investigative function. My counsel may differ with me. We have the initiatory function as well that we should pursue. That is to initiate on our own and on our own basis to look at complaints that have not been brought before us.

For example, I see a function that was not spelled out in the act, one that I have already undertaken and it should be continued. It is the function of public education, which was not really considered as a function of previous ombudsmen, except by Mr. Maloney. I do not see our function circumscribed.

Mr. Bell: Does it make any difference whether some believe you have one function or others believe you have more than one?

Dr. Hill: That is going to go on. There are going to be many who say, "You have this or that function which you are not pursuing." Mr. Sopinka, for example, when he gave a lecture at our office, named a number of functions we should have and should be using that we are not using. One was to initiate investigations on commissions and ministries and take an initiatory role in that area without a complaint. He mentioned that. I will distribute copies of his paper in which he outlined to us a number of functions we should be undertaking in an initiatory sense that are not spelled out in the legislation.

Mr. Bell: The committee would welcome copies.

Dr. Hill: I have that paper.

Mr. Bell: Yes. I take it what John Sopinka is saying is that he has at least identified a number of things which he has called functions that are available under the legislation that perhaps have not been used as frequently--

Dr. Hill: Or not explicit.

Mr. Bell: Which are not explicit and that might be inferred by interpretation.

Dr. Hill: Right.

Mr. Bell: Quite frankly, the reason I bring it up is that--and let us be blunt--when it has served the purpose of the Ombudsman in the past to limit or try to limit the jurisdiction of this committee, the office has taken the position: "We have only one function and therefore you have only one area of jurisdiction, that is, the investigatory function. If you presume to get into any other area, that is when we may put our back up and try to straight-arm you."

The examples are way back when one member of the assembly believed his privileges had been affected in respect to the activities of staff members in the north, and another one where the committee believed it was entitled to background material from the budget. That was resisted at first because of the jurisdictional debate I am referring to. That is why I asked whether it really made any difference to you.

Dr. Hill: There is one point I would like to make. My view, with regard to the working relationship with this committee, might differ slightly from that of my predecessors. I believe in an open, frank and co-operative working relationship, whatever the word "function" means. There is another view, though.

I would also hope we do not get into any arguments or problems regarding the internal administration of the Ombudsman's office. The Ombudsman should be free to administer his office the way he feels he should, with one proviso, namely, that where there is a major problem, or maladministration or a very serious problem breaks out that becomes quite public and dangerous and where the public interest is at stake, then I believe it is the right of the committee to question and step in.

I cannot tell you what that might be, but I can see where members of Parliament have the right in the public interest to step in where there is a major problem affecting the function of the Ombudsman's office. Otherwise, in the administration of the office, I would hope they would stay clear of it.

Mr. Bell: Do I take it that this is an answer to the question that is often put, "Who watches the Ombudsman?"?

Dr. Hill: That is right.

Mr. Bell: I should say you are the very first person having your position who has stated that, and I welcome it and commend you for that remark.

Mr. Philip: In an analogous situation, namely, that of the Metro Toronto Police complaints ombudsman, Mr. Linden, by a fortuitous set of circumstances, where an Attorney General, who happened also to be Solicitor General, was open to letting him take on certain functions that were not explicitly given to him under the act, and also a chief of police who was open to it, Mr. Linden was able to initiate what you would call systemic investigations. There were a number of initiatives he was able to take, and which I believe you may have started to take, which were not spelled out in the act.

Dr. Hill: That is right.

Mr. Philip: It was interesting that the Attorney General, Mr. McMurtry, to his credit, explicitly put in the last act the powers and the responsibility of doing those kinds of things. One of the reasons was that at some time Mr. Linden would not be there, the chief of police would not be there and there might be a more reactionary kind of administration that would say, "You are limited by your act." Following up on that, do you not see that perhaps there is a need to give you those powers under the act which you have taken and which nobody so far has questioned?

Dr. Hill: Yes. I would like to see it explicit in the act.

Mr. Bell: At pages 6 through 8, you have reported on reinstatement of a position that some have felt is long overdue in your office and others have felt should not have returned. That is the communication and public education directorate, a vehicle to bring the word of your office to all areas in all communities of Ontario. Can you respond to something that has been said in the past about that function? I do not mean to be identified with it, but I would like your views on the record. What has been said is that the exercise of public education, meetings and media is a make-work project and that it should be discouraged against the background of an office that has historically been overworked.

Dr. Hill: The previous select committee answered that when the members took their trip up north. When they came back they said to the Ombudsman: "Nobody knows you. How can persons have rights, respond and deal with the Ombudsman and bring their complaints to him if nobody knows the Ombudsman? You do not exist. You do not exist in North Bay or here or there."

To use that one example, it said to me that the Ombudsman has an obligation. It is not to propagandize. There is a very distinct difference between tooting your horn and propagandizing as opposed to letting people know what exists. The point was very forcefully made by the last select committee that we had to get out and let people know what we were doing. That is the best answer to that.

11:50 a.m.

Mr. Bell: At page 9 you introduced the concept which I, at least, am not aware is used by any of your colleagues in any other jurisdiction, that is, the local agent concept or Ombudsman representative in localities. One of the purposes is obvious and one of the benefits would be obvious. If you could do that, your overhead, with perhaps the exception of that person's remuneration, would be next to nothing. In other practical terms and against the background of the current legislation--and I recognize you have the power to delegate all but one of your functions--how do you see such a person carrying on in a community with the same power and authority that you carry on?

Dr. Hill: I do not think he would have the same power and authority. I am looking at this very carefully with our counsel and organization. Right now at least, I am looking upon that person as being primarily an information and referral person, not as being in an investigative function to start with. He would be there, and people would know where to go. They could go there, and he could do an educational job with them. He would do an educational job in the community and work with the main office in case of an investigative function.

The community would have a local resident available for immediate problems. By picking up the phone, we could have an investigator there to help them later on. He would not have an investigative function to start with. It would be information, referral and education.

Mr. Bell: Are you thinking in the future, depending upon the experience of the initial trial, to expand that authority to one of problem solving or dispute resolution?

Dr. Hill: This is all very new, and I do not know if any other government agency has done it. Our goal is to inaugurate it on a pilot project basis to start with to see what the experience is. Based on that, let us say in a year, I will be able to tell whether or not we can go further with it. I want to do it only on a pilot project basis, perhaps in three new areas, new communities. Only after I have gained that one year of experience in dealing with it, will I be able to answer the question of whether I want it to go further or whether it will work. I have to experiment with it.

Mr. Bell: One of the reasons I raised it is that when the committee travelled to the north a couple of years ago, particularly to the North Bay office, it quickly realized that the office was well staffed with very competent people, but because the so-called support services were still in Toronto, there had to be a sending down and a receiving back of things during the investigative stage. There was a perception even among members of the office--Gilles Morin may want to comment on that in more detail--and in the community that some effectiveness was lost. Probably a majority of the committee members who visited the office that day felt if the office had more teeth, in your context, its ability to become more effective in the community might be enhanced.

It is a fascinating concept. If you can identify people in various communities as wearing your mantle, speaking with whatever authority you have and whatever authority the public perceives you have, it may be another way. We will throw it out for your views and consideration.

Dr. Hill: One of the criticisms which I am well aware of--and we are all aware of it; certainly Mr. Morin is quite aware of it--is that the investigative function in the regional offices has not yet taken place. The people in the regional offices, I understand, have not had the investigative function to complete and go through with a case. In due course and with the proper

training, I would like to see the investigative function on a regional basis. That might take a little more time and it takes intensive training.

I would certainly like to see effective investigation take place on a regional basis in the community where the problem exists. We are not quite ready for it yet, but my mind is open to it and I would like to see it done.

Mr. Morin: I am inclined to agree with Dr. Hill on this, because it is very difficult. One just cannot take a person out of the blue and all of a sudden make him an investigator. It is a long process. I know some senior investigators in the Office of the Ombudsman who are still learning. One simply cannot appoint a person and say, "You will investigate these cases immediately." He needs proper training, and that training can be taken only here in Toronto and also in the company of another experienced investigator. It cannot be done overnight. I agree with Dr. Hill on that.

Mr. Pierce: In that same respect, I think it is important that the people being put into those offices be people from the region or from the area where the office is being established so they have a much better feeling for what takes place.

I agree it is necessary to train the officer to be able to investigate properly, but I think it is really important that he come from the area in which he is going to be working.

Dr. Hill: If I introduce the concept of the stringer, which I am still debating with the staff in my office, that person will absolutely be from the area. The stringer in Sarnia, Windsor or London will be a Sarnia, Windsor or London person. If you do not do that, you defeat the purpose of the whole operation. It must be a local resident.

Mr. Bell: Dr. Hill, I take it that your intended trip to the north is to visit personally as many of the native communities as possible, including some of those to which the committee travelled a year and a half ago.

The committee has since said that it made only half a trip, that it should at some time complete the second half. What are your comments on that? If you concur that the committee should make the second half of that trip, when should it be made in relation to your trip? Before or after?

Dr. Hill: Mr. Bell, I am getting conflicting information about all of this. By that I mean someone says: "Do not go in November; it is deer-hunting season. Do not go in January; they are fishing," or whatever. I am getting different pieces of advice from the government, from government agencies and from other people about when and where to go.

I would like to go late this fall, frankly, if it is possible. Someone might say, "We cannot do that; it is moose-hunting season." I have to figure it out and I am still trying to do it.

I intend to go. I have made a commitment to go. It may very well be that the standing committee might want to go on its own at a different time that is convenient for it, but I know I am going to have to go up there some time before the year is out. As soon as I can get an agreed-upon date, with the help of Gilles Morin and others to tell me what is the best and what is the worst time, I will work it out and I will go.

You were planning to go and I have forgotten when; I think it was the first week in October. That is off for me, but we may want to make our visits separately. I do not know. I am still getting information on that, Mr. Bell. I wish I could answer, but I cannot.

Mr. Hennessy: Dr. Hill, my suggestion would be the fall. During the wintertime the weather changes. Within a radius of 50 miles, you can wind up in a big snowstorm. You can go between Beardmore and Geraldton and wind up in a snowstorm in between the two communities. It may be nice in Beardmore, but on the way to Geraldton you are going to get caught in a snowfall. The best bet is before the weather turns bad. They sometimes get snow there two weeks before they get it in Thunder Bay.

Dr. Hill: When would you say? In November?

Mr. Hennessy: I would say some time in October. Some time in November they start having snow and it is very difficult to travel at that time. If you went by car, you could have problems and get caught. If one of the cars happened to conk out and you were on a highway where there was no gas station within 10 to 15 miles, you would be stuck on the road.

Dr. Hill: Someone said that if you go up there in October, everything is muddy, you have to fight the rains and it is goose-hunting season.

12 noon

Mr. Hennessy: Yes, but they do not hunt moose in the towns or the cities, and they do not hunt moose on the road. They hunt moose in the bush, and you are not going to the bush.

Dr. Hill: Mr. Hennessy, I am having a few problems, and hope to rectify them shortly. Mr. Bell, I hope to come up with a better answer for you then.

Mr. Bell: That is fine.

Mr. Hennessy: You are going to regret it if you go up in the wintertime.

Dr. Hill: I know. I have been up there in the winter.

Interjection: Some of us survive.

Mr. Morin: We all survive.

Mr. Hennessy: If you are from the sunny south, and you are not used to things up there--all I am saying, with all due

respect, is that I used to travel that area for 14 or 15 years as a salesman; so I know the area. I would rather make my trips in October.

Dr. Hill: How about early November?

Mr. Hennessy: It would be all right, but not too late because then you get a snowfall up around Geraldton, Nakina or something like that, and you are in trouble.

Mr. Pierce: With respect, Mr. Hennessy was selling a product that was in much demand in the north, and they were happy to see him. They may not be quite as happy to see us in the middle of the winter.

Mr. Bell: Dr. Hill, as to your budget, I think we should state it for the record now. You did submit your budget in June. A copy was given to the clerk. Technically, it is not part of the committee's term of reference now. My understanding is that the government's intention is that it will be. After the Treasurer's budget is handed down in October, there will be the formal direction to this committee to deal with it. If that is your understanding, I think all we can do now is to agree to defer the matter, Mr. Chairman and members, to as quickly as possible in the period of late October or early November.

At pages 16 and 17, you give us some examples, obviously some of the most successful examples, of fiscal measures taken. You may not have blown your horn loudly enough, but do I understand from what you are saying in those pages that you will soon introduce measures to save your office more than \$100,000 a year?

Dr. Hill: Yes, that is correct, Mr. Bell.

Mr. Bell: I am sure you can put that money to good use.

Dr. Hill: Stringers, Mr. Bell.

Mr. Bell: That is what I was thinking of. I would like to know where that word came from.

Dr. Hill: It is a newspaper term. Newspaper offices put local people in different areas.

Mr. Bell: Maybe some of our colleagues in the media can tell us off-hours where the word "stringer" came from, but it is an interesting use of words.

Dr. Hill: It is a newspaper term.

Mr. Pierce: Where do they hang out?

Mr. Bell: I agree with you that the clean bill of health given to your office by the Provincial Auditor in his last report at page 18 is a reluctant clean bill of health. Maybe that means it is even cleaner than it might otherwise be. I do not want to review the litany of discussions and dealings between your office

and the Provincial Auditor in the past. Is that the first time your office has received such a comment?

Dr. Hill: Yes, it is.

Mr. Bell: I thought so. One part of the debate with the Provincial Auditor and this committee has been your office's adoption of the Manual of Administration. I recall somewhere, maybe it was last year, hearing that as a matter of policy you had adopted that.

Dr. Hill: I have not formally adopted it by letter or whatever, but I have adopted it as a policy. In other words, I have advised my controller and my executive director to follow the Manual of Administration, and that has been very explicit. I have told them that in meetings, and indeed we are following it.

Mr. Philip: What happens if there is a violation?

Dr. Hill: If there is a violation, what do I do in the office? I just raise a little hell, I guess, which I have done on occasion.

Mr. Philip: Probably more than some of the other violations in the Manual of Administration.

Mrs. Meslin: I might add this for clarification for the committee: In addition to the governmental Manual of Administration, we have just completed our internal manual of administration, which I have for the committee's perusal, because there are many issues within the office of the Ombudsman that affect only the office of the Ombudsman. We have just completed, and are now printing for all our staff, an internal manual of administration. You will get copies, by the way.

Mr. Philip: There is a certain irony that after all these years of shouting at the Ombudsman to adopt the Manual of Administration, the Manual of Administration is now being reviewed and will be revised shortly by the Chairman of Management Board.

Mr. Bell: There is another irony too. You realize, Dr. Hill, one of the byproducts of your office and the governmental organization affecting that extraordinary result of resolving 14 of your recommendation-denied cases is that you give this committee more time to do other things.

Dr. Hill: We are. I felt, as I took over as Ombudsman, we were in sort of an anomolous, tricky situation. It is an incongruity I did not want to tolerate that if we sit down and talk to government organizations about the fact they were not abiding by the manual, then we turn around and look at our own operations and we are not abiding by it.

Mr. Bell: Please turn to page 19, sir. I know you dealt with this subject in more detail with members when they attended your office in late July. Probably no useful purpose could be served in reviewing anything else in more detail as to the organization. Can I talk about one of my favourite professions, the legal profession?

There has been some discussion through the years between this committee and your predecessors, both permanent and temporary, that lawyers were not being fully and effectively utilized. Historically, some believed they were being used more as the writers and the givers of legal opinions and used less for what they thought they were supposed to be trained for, problem-solvers. A long time ago the committee said one of your predecessors should give some thought to putting those lawyers in the trenches.

For the record, and maybe just for me, are lawyers now doing more in the problem-solving than they have in the past?

Dr. Hill: I will have Mrs. Meslin speak to this, but they have been assigned to an investigative team to work in the trenches and to assist and work side by side with the investigators on a daily basis. They are just not giving opinions; they are working with the problem itself as part of the unit.

Mrs. Meslin, do you want to say a word or two about that?

Mrs. Meslin: We now have lawyers in particular cases actually working on the case, very often working together with an investigator so they can be the legal problem-solver. Over and above that we now have a general counsel, who is the senior legal person in our office who can look to other legal issues and advise the Ombudsman. We also have a team that deals with justice matters; it is made up of investigators who happen to be lawyers. So I think we are utilizing their services very well.

12:10 p.m.

Dr. Hill: Let me add to that. You will note that I have done away with the position of special adviser, which had been traditionally part of the Ombudsman's office. I feel the general counsel, executive director and the assistant directors are the special advisers. Why do I need a special adviser when I have top general counsel and I have an executive director? That is another function I am giving them and having them advise me, where in the past we had this concept of the special adviser doing that. General counsel basically is a special adviser and the executive director is a special adviser; they do away with the position.

Mr. Bell: We should perhaps save the next matter for this afternoon when we talk about statistical analysis. I would be interested to know, with the onset of your new computer and your new programs what new, more detailed analysis will be available not only from the perspective of this committee but also what are you going to be able to call on now to assess the performance of the office under any of the categories.

Maybe we can save that for this afternoon. I have only about another 10 minutes, and I would appreciate if I could finish anything I have on this report and then we can start cleanly on a subject this afternoon.

At page 21 you make a categorical statement that may or may not come back to haunt you. In the second paragraph you state that

the "office is in basically good health...competent staff...streamlined organization...adequate budget and a sound system of fiscal and management control."

Given all of that, I take it you expect on a comparative basis within the next fiscal period ending March 31, 1986, some improvements. If so, where?

Dr. Hill: Where do I expect the operation to improve?

Mr. Bell: I guess the fairer question to ask you is in what areas are you going to be looking forward to seeing improvements?

Dr. Hill: I am not talking about budget now; I am primarily and absolutely interested in the time it takes to resolve a complaint. I am going to be pushing my staff very hard with this new system, and I am going to be checking and watching very closely the time it takes to resolve an issue--that is what the whole operation is about--all the complaints on behalf of the public of Ontario.

We are not there yet. We are not handling the cases as quickly as I want to see them handled. I do not want them handled in a way that is going to harm the quality and professional confidence, because we have had an excellent staff doing that. They have done their cases well, their reports are well written and their investigation is splendid, but the time is still not what I want it to be. We have to bring that time lag down. That is where I consider the most important move will be made by me in the coming year. I am going to measure it.

Mr. Bell: Are there any other areas you are going to be looking to?

Dr. Hill: Yes. Going back to my concept of stringers again, we are not covering the province. We are still urban-oriented. Thunder Bay is urban. Kenora is nearly urban. Timmins is urban as is Toronto. We have to move out into the boondocks. We have to move out into other areas. I think the stringer is going to be the solution, if I can use it, so people have a feeling of access where they do not have a feeling of access now. So my next major responsibility is to implement a regional plan that will be effective.

I have several reports on my desk now regarding a regional plan. I have ideas about stringers. Within the coming year, I hope to bring into being a good, solid regional plan so people are covered like they would be on a grid and communities are covered in the way I would like them to be covered.

I imagine my next major priority is to cut down the time spent for cases and to have regional programs that are meaningful.

Mr. Zacks: Could I just say one thing about those two issues? They are dependent, and as you get more cases you get a greater volume of work and that could affect the duration. I just want it kept in mind that although Dr. Hill is strongly committed

to reducing duration time, plus increasing awareness and access, one has an effect on the other. The next time we look at these figures, I do not want that to be lost.

Mr. Bell: Well done, counsel.

At page 22 you touch on the systemic matters, and we are going to be talking to the Workers' Compensation Board in more detail later this week, on Thursday to be specific, on comments you made in your report as to that board.

You mentioned three others--perhaps four others, if we say the housing report is a general area. I take it you are not asking anything of the committee at this point, but that the committee can expect, at some time perhaps within the next 12 months, to hear from you on some or all of those.

Dr. Hill: I am saying I am turning my attention to these particular areas, perhaps researching them and perhaps writing about them. I am concerned about them right now. They are matters of very much concern me: overcrowding, nursing homes, the Ontario Housing Corp. All I am saying is that if you are asking what areas of social concern are really bothering me right now, the ones I want to research more deeply, these are the areas.

Mr. Bell: Again, just for the record, on pages 27 to 41 you deal with the expansion of your jurisdiction issue. We will discuss this in more detail next week. In the interim, you have thrown it squarely where it should be, at this committee, to be the focal point of the discussion. I think the committee, both historically and currently, would agree with you that is where it should be. I would expect that the government, in particular the Attorney General (Mr. Scott), would agree with that view, that if there is to be discussion the focal point should be through this committee, for obvious reasons.

Could you give some thought--and we can review those thoughts next week--on how the committee, assuming it agrees to take up the challenge, might go about conducting the discussion? Specifically, from whom should the committee hear?

It is obvious we can say representative groups of municipalities or municipalities specifically, but cast the net, if you would, wider than that. Again, not only who should we hear but how should the committee go about doing this, in your view?

Dr. Hill: We will try to come up with some suggestions on how to proceed or ideas on how you might wish to proceed.

Mr. Bell: I do not intend to prolong or continue a debate with you as to whether there is an analogy between your office and that of the chairman of the Human Rights Commission, but I would think the best testimony to your philosophy is the resolution of the 14 cases. That is probably your strongest suit. Understand, though, the committee's concerns that it does not want you to get trapped in any one particular case of going down the road of mediation only to find that road has been closed and it may be impossible or extremely difficult for you to revert back to

the advocate role.

I do not mean to be cynical as to how some governmental organizations might deal with you, but both of us might be able to list right now some that would take advantage of a seemingly conciliatory position and interpret that as one of weakness as to the fundamental merits of the case you are investigating. By way of comment rather than question here, and obviously keenly aware of the need not to be caught in that way, it is a warning if nothing else.

12:20 p.m.

Dr. Hill: I accept your warning. I understand it. The process has worked quite well so far. We might run into a roadblock somewhere down the line, but we are getting the co-operation and I do not feel I am abrogating the rights of the complainant. That is the name of the game. I am not doing that and I do not intend to do it. It is a negation of the concept of mediation because in a way I am mediating on my terms.

Mr. Bell: At page 46, you have told us about your meetings with the Ministry of Correctional Services to resolve certain matters and you have an intention to introduce this procedure with other ministries in the near future. I take it that is the reference in your 12th report to an intended new procedure you were going to initiate in discussions with ministers to resolve disputes? Is that correct?

Dr. Hill: Yes. I have done the same thing with the Social Assistance Review Board. We struck a committee of the highest level. I want to do that with other ministries to establish a climate of discussion and acceptability for dealing with them and I intend to pursue that. Is that what you mean?

Mr. Bell: That is what I mean. It is something we can hear about from you in the future, about success, rather than currently.

Dr. Hill: Yes, how it works.

Mr. Bell: Did you use this new process at all in your efforts to resolve these 15 cases?

Dr. Hill: Yes. We used it with the great assistance of the Deputy Minister of Labour with the Workers' Compensation Board. We used it with the counsel from the Ministry of Labour, Paul Hess, the Ministry of Health, top officials and top lawyers. We have been trying to use it--and somewhat successfully lately--with some of the board officials. We have been using it over and over again with top officials and it seems to be working. We have used it in approximately four different areas so far. It is a new approach, saying to the particular ministries: "Let us sit down. Give me your top officials and let us talk about it."

Mr. Bell: We are going to see the specifics of some of those cases that were settled, but with others we are not. We are merely going to hear from your office that they have been

resolved, with perhaps a minimum of particulars and an indication from your office that they are resolved to your satisfaction.

I do not know how to ask this question delicately so I guess I will not.

Dr. Hill: Go ahead.

Mr. Bell: Could you comment on whether the resolution of the 15 matters has been in a way that obtains the substance of your recommendations as intended in your report or accomplishes something less than what you originally intended?

Dr. Hill: The resolutions contain, beyond a doubt, what I originally sought, with minor--my counsel is tapping me. There is nothing basic or structurally important given away.

Mr. Zacks: The reason I was tapping Dr. Hill is that in two cases we got information not made available to us earlier. That resulted in a complete reversal in position in one situation because the new information completely changed the Ombudsman's opinion. Had he had that information at an earlier stage, the complaint would not have been supported.

In the second case, there was a stepping back from the recommendation. Something was achieved that may go towards assisting a complainant but not to the same degree as the initial recommendation because again we received information not given to us at an earlier stage, which changed the Ombudsman's opinion.

Dr. Hill: Through sitting down again in this conciliation-mediation process, we obtained stuff that, as Michael says, we just did not have before.

Mr. Bell: One would be surprised if out of 15 cases you did not have at least two that were in that category, but you understand why I want to get this on the table. There are two ways of looking good: getting the result you originally intended, or to put it bluntly, selling out and getting something substantially less. Inasmuch as many of these will not be reviewed, I want the comments you have given us as a matter of record that there has not been a sellout, that it has been obtaining a substantial result or a result substantially as intended, with perhaps the two exceptions, although I do not even think they are exceptions.

Dr. Hill: I think I have given you that assurance.

Mr. Bell: On that note, unless members of the committee have any questions, I think we can adjourn.

Mr. Chairman: We will adjourn until two o'clock.

The committee recessed at 12:26 p.m.

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Publication

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
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Hennessy, M. (Fort William PC) Mr. Shymko
Poirier, J. (Prescott-Russell L) for Mr. Newman

Clerk: Decker, T.

Staff:

Bell, J., Counsel
Madisso, M., Research Officer, Legislative Research Service

From the Office of the Ombudsman:

Bohnen, L. S., Director, Investigations
Brookwell, L., Systems Design and Operations Supervisor
Hill, Dr. D. G., Ombudsman
Meslin, E., Executive Director
Mills, A., Controller
Zacks, M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, September 3, 1985

The committee resumed at 2:10 p.m. in room 151.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: I will call on our counsel, Mr. Bell.

Mr. Bell: Members of the committee, unless there are any questions still remaining from Dr. Hill's opening remarks, save and except those we are going to deal with next Tuesday, I propose now to get into the other major area for today, the statistical analysis of the Ombudsman's last fiscal period ending March 31, 1985, on a comparative basis with the previous three fiscal periods.

If you would all turn to volume 1 of your material, specifically tab 2(ii), you will see already certain documentation, including statistical charts for the three years in question. Following that, there are certain bar graphs which will be explained to you in more detail. The bar graphs essentially are the graphic illustration of the information contained in the preceding pages.

Mr. Decker distributed to you this morning the remarks to be made by Eleanor Meslin, Dr. Hill's executive director. Just for accuracy of record keeping, we should put her remarks in this part as well.

Those two sets of documents will serve as the focus of discussion this afternoon.

With that introduction, Mrs. Meslin, would you begin, please?

Mrs. Meslin: Members of the standing committee, I am pleased to report on the statistical and record-keeping functions of our office for the fiscal year 1984-85. As Dr. Hill mentioned in his annual report, these functions were reviewed last year for the purpose of presenting statistical information that is more readable and more reflective of the work performed. A committee was struck within the office to accomplish this and the results of its labours are presented on pages 17 to 20 of volume 1 of the annual report. This material is a more concise presentation of complaints and requests received as well as the disposition of all jurisdictional and nonjurisdictional matters with a glossary of the relevant terminology.

You have heard it said that in the past our office used statistics as a drunk uses a lamp post, more for support than enlightenment. We are now working hard to change that.

For your benefit, I have distributed a supplementary document with more detailed and comparative statistics as well as duration time. Let me make a few general observations.

Last year we received 13,458 complainant information requests. Last year we also closed 13,458 complaints and information requests. On that basis, I am tempted to say the backlog problem which has hampered the efficiency of this office from its inception is permanently behind us. However, I cannot cheat. There were 1,174 files still in progress at the end of the fiscal year.

On pages 3 to 9 of the supplementary material, you will notice that slightly fewer jurisdictional complaints were closed in fiscal year 1984-85 compared to the two previous years. However, the average duration to closing has improved. In other words, we are taking less time to dispose of jurisdictional complaints. Although it is not a particularly helpful statistic, it is one this committee has always been interested in. One could express the average duration to close a jurisdictional complaint in days. In the last fiscal year that would amount to 229 days to close a jurisdictional complaint compared to the previous year's figure of 264 days, an improvement of 35 days.

I think you must also note that when you look at the total number of jurisdictional complaints, we close 80 per cent of them within six months. I mention it later, but I would rather put it in here.

The problem of using numbers is that the relatively few complaints that take more than two years to close significantly raise the total average. I think you can see that from the bar charts.

The final page of your supplementary material lists 42 complaints that required more than 33 months to close. As you can imagine, such complaints have a horrendous effect on our average duration statistics. We are currently looking at this situation from two viewpoints: internal procedures and external delays.

On the point of external delays, we are currently monitoring a sample of complaints to determine the time those complaints are outside of our control. For example, there are three complaints on the list that involve industrial hearing loss claims against the Workers' Compensation Board. These complaints required 34, 37 and 40 months respectively to close.

In two of those complaints, our office had reached an agreement with the board in September 1983 that the board would honour those claims if a particular specialist supported our contentions. He did, but the board decided to commission a special study from him and await the results. We finally issued our report in August 1984 without the specialist's report. It has not yet been submitted.

In other words, in those two particular files, there was a two-year period where our hands were completely tied. I think it is very important to note in those 42 cases, when I talk about monitoring, it is the time actually spent by our office in processing particular complaints as opposed to the delay time from ministries in other places that we cannot control.

The above cases are among the ones that were settled just prior to the hearings. Those are the hearing loss cases I just referred to.

We have also instituted a pilot project to monitor the time taken to issue a report after it has been to case conference. We have set deadlines for drafting, typing and approvals that each investigator monitors. To date, this project has increased the efficiency of producing final reports. I am hopeful that within the next month we will introduce this project as a permanent one.

On internal procedures, we are doing our utmost to streamline them and cut down our disposition time. As Dr. Hill mentioned in his remarks, the whole point of reorganizing the investigative areas was to expedite complaint handling. We should be seeing the results of that shortly. As a matter of fact, we are seeing them already.

One of the first things we did was to insist that every letter received in our office was acknowledged and out within five days. Another modification we have introduced was the reduction of the number of documents produced in many of the cases, which eliminated some of the internal approval steps. The investigator under our new system is now entirely responsible for seeing that his or her case is moved through the process as efficiently and speedily as possible. The case is in the hands of the investigator and it is the responsibility of the investigator to expedite it.

In our WCB complaints, this has resulted in an average saving of approximately 40 days of investigative time per case in many of the complaints that we ultimately support.

2:20 p.m.

Another important initiative I want to mention is the upgrading of our hardware and software equipment in order to enhance the management techniques available to us. In the past we attempted to perform some data processing by using our word processing equipment. This was not satisfactory. We could not get the necessary information.

With the help of the feasibility study, we were advised to lease more up-to-date equipment. We have currently leased a Wang VS 85 G system. This equipment gives us integrated word and data processing capabilities which are at state-of-the-art level. The equipment includes a central processing unit, two 75 megabyte disc drives, 13 work stations all connected to the central processing unit, one 600 line per minute printer and four 55 character per second, letter-quality printers.

By the time it is working at full capacity, some of the capabilities and advantages we expect are as follows:

More frequently produced and more usable reports. The system has a larger memory and a faster printing process. This will have its greatest impact in the area of reports for management's use, both in the speed with which we will get those reports and in the kinds of reports and the requests we can make.

Elimination of numeric codes on reports which the user formerly had to translate and the presence of readable English narrative. That Greek really means that when we did get reports previously, the status of the case, for instance, was done in code. A code number told us the status and many users--myself in particular--did not understand what it meant. You can look at a report much more quickly if it is in readable English narrative. That is what we now have with the new equipment.

A cost reduction per month of 40 per cent.

Further saving when data, now processed at the University of Toronto, are processed in-house on this equipment. That is our intention within the next several months.

Better quality letters and reports because of the presence of the Oxford English spelling verifier. It is an amazing machine. It detects spelling errors and saves our people an awful lot of time.

Mr. Philip: It means I could now work at the Ombudsman's office.

Mrs. Meslin: If you spell poorly, send your stuff to us.

The system has the ability to communicate with our regional offices and with other external data bases, for example, the Ministry of Government Services payroll, InfoGlobe, Quiklaw. We now have this speedy ability with the new equipment.

The equipment also has the following expansion capabilities: We can add disc drives and 19 more work stations. The main memory of the CPU can be enlarged and the ability to utilize new software releases which require a large amount of memory will be available.

When this equipment becomes fully operational, another significant advantage will be our ability to supply instant detailed analyses. If you have any detailed questions about the equipment, I have brought along Allan Mills, our controller, and Larry Brookwell, our systems design and operations supervisor, to answer them for you. Because the introduction of this equipment is very important for management of our case load, this committee should have answered whatever questions it requires.

Mr. Bell: I am sorry to interrupt, but I am just reminded that in the third last paragraph of your brief you obviously did not use that Oxford English component.

Mrs. Meslin: Is there a spelling error?

Mr. Bell: Is that your way of telling us how much you need it?

Mrs. Meslin: Where is my spelling mistake?

Interjection: It says "quipment."

Mrs. Meslin: It is the equipment.

Mr. Bell: I always blame it on the machine when it is anything I have--

Mrs. Meslin: That did not go through the spelling disc.

Mr. Zachs: That is the new technological term for computer equipment. It is jargon.

Mr. Bell: Oh, I see.

Mrs. Meslin: Thank you, Mike.

In conclusion, I want to assure this committee that our office is exploring every method possible to enhance its efficiency and to cut down the time required to close complaints. I assure you that in this endeavour you will have the full co-operation of our very professional staff. I will be glad to respond to any suggestions or questions you may have.

Mr. Chairman: Are there any questions?

Mr. Sheppard: At the top of page 5, number 3 mentions "a cost reduction per month of 40 per cent." Mr. Bell asked this morning during Dr. Hill's presentation about saving \$100,000. Is this over and above the \$100,000 that was mentioned this morning?

Mrs. Meslin: Yes.

Mr. Sheppard: Approximately how much would 40 per cent be?

Mr. Mills: We were spending about \$12,000 a month and we anticipate, when the service contract cuts in, spending about \$7,000 to \$7,500 a month. So we are looking at \$4,500 a month.

Mr. Sheppard: Are there any other areas that you are looking at in trying to cut costs?

Mrs. Meslin: Do you mean in relation to machinery? We are always looking to cut costs.

Mr. Sheppard: Machinery or anything to do with the Ombudsman.

Mr. Mills: One thing I can answer right away, if I may, is purchasing telephone equipment in connection with the Centrex-III. A figure was mentioned this morning about a cost saving. That is the charge levied by Bell Canada for the use of lines.

The purchase of the equipment will mean we do not have to rent equipment from Bell; so that is a further saving which I had not quantified at this point.

Dr. Hill: Another saving I might mention, at least for the time being, is that the only person allowed to go out of the country is the Ombudsman.

Mr. Sheppard: Who are you going to take with you? Any of the committee?

Dr. Hill: Me.

Mr. Sheppard: Have we any jurisdiction over your budget?

Mrs. Meslin: You have your own budget.

Mr. Philip: Do you have the nonjurisdictional material or problems on the computer?

Mrs. Meslin: Yes.

Mr. Philip: If someone comes in and has a complaint, would you have an automatic letter the computer would send out, saying in effect: "Unfortunately, this is not within the jurisdiction of the Ombudsman of Ontario at the present time. However, it is within so and so's jurisdiction. The local office or the closest office to you dealing with that kind of problem is so and so?" Is that an automatic thing or does it simply show up on a board?

Mrs. Meslin: It would depend. If it is one of the areas that we constantly get and we constantly refer, we do put it on the machine so that the memory retains it. Most often we try to be a little more personal in those situations. The draft letter may have memory paragraphs inserted in it, but we prefer, if we can, to be more personal.

Mr. Philip: For how long a time could there be no input into a case before that showed up on the computer?

Mrs. Meslin: We want to know that there has been no change in status, in other words, that nothing has happened over a period of time. What we are introducing is a system whereby the case will have an asterisk beside it monthly whenever nothing has happened in that month, because we get a monthly report, so that for monitoring processes, both the assistant directors and myself can look at the monthly reports and say nothing has happened in this case for a month or whatever period of time we deem is a reasonable period of time.

Internally, the assistant directors are looking at two weeks for themselves, checking an investigator to see whether or not something has happened. When it comes to my desk, I get the reports once a month and that asterisk will appear whenever there is no change in status on a monthly basis.

Mr. Philip: Can you build into your program anything that would give you a pattern of where the delays are? For example, for those who are working on Ministry of Correctional Services problems, I would imagine it may well be that certain people in certain institutions respond more quickly than others. There may also be patterns within ministries and so forth.

Would you be able to identify a systemic problem in time lag by simply programming that into a computer and saying this guy never seems to answer his mail on time or whatever?

2:30 p.m.

Mrs. Meslin: It depends on how finite you want to be. If you are looking to find how often a particular area in the Ministry of Correctional Services delays cases, we can find that out because we are going to put into the machinery data on when a letter is sent out and when a response is received; so we will be able to pull those data. If you are talking about an individual, that would take a great deal more memory, I would imagine. Is that right, Larry?

Mr. Brookwell: As far as individual files are concerned, we can get a history of the information starting from the beginning of August 1985, because we just switched over the system then.

Part of the study of statistics that was carried out last year was to identify certain milestones in a file's history. The computer system will keep track of all the important stages throughout the life of a file. When required, we will be able to produce statistics for individual ministries, or even individual files assigned to a person, so we will be able to find out where the delays or the durations happen to be a little too long or whatever we want.

Mr. Philip: So you could find out whether John Brown always keeps you waiting six weeks before answering your letter. That would be automatically--

Mr. Brookwell: If John Brown happens to be the person to whom we are sending the letters, yes.

Mr. Philip: It seems to me it would be very useful to the ministries to know that, because it may not be the Ministry of Correctional Services that is at fault; it may be certain people in it while other people in equal positions may be responding quite reasonably.

Mrs. Meslin: It is a step-by-step basis in building the kind of information base we would like to have. The first step has to be to be able to say to a ministry: "We have statistics that indicate you do not answer in less than seven or eight weeks when our letter requests a three-week response. What is your response to that?" We can then go into more detail if we have to, but I think it is important in looking at the delay factor.

Mr. Philip: Sometimes I have laid a complaint with you that an agency--it is usually the Workers' Compensation Board--has delayed. The problem is not how it resolves the case but the fact that it is taking too long to process. Do you anticipate one of the future studies of your reports might be where the delays are, in what ministries? That seems to be the problem. A constituent can accept that somebody is finding against him or for him. What he cannot put up with is the no man's land of not knowing what has happened.

Mrs. Meslin: I think that is one of the purposes of the changeover to this more sophisticated equipment. With the larger memory and the better capability, we will have a lot more tools at our disposal.

Mr. Philip: A good example is workers' compensation. I am booking this summer, and I am getting appeal dates that are in March. That is abominable. To wait that long for a hearing is completely unacceptable.

Mr. Baetz: The steps you have taken here to speed up the processing of individual cases are obviously very impressive and commendable, but in my mind it raises a question that may sound to you a bit like the mother who sent the kid to the grocery store saying, "Take your time, but hurry back."

The question is what kind of quality control you have. The message has now come from on high, as obviously it should have, that you have to speed it up so much that the investigators tend to speed up and, in doing so, perhaps reduce the quality of their investigations, because many of these cases obviously do take time; they are complex cases and so on.

I wonder what measures the Ombudsman has taken to see that there is this fine balance. We were certainly not in balance heretofore; we took too much time. What steps have you taken to maintain this equilibrium?

Mrs. Meslin: If you look at my remarks, you will note that the first step we are taking to try to find out the reason for delay is to look elsewhere, to look at things that are not in our control. In other words, we are not saying to the investigators, "Hurry up." We are saying: "First of all, let us see what the cause of the delay is. Is it outside your control?" We are trying to see if we could come to some accommodation of that.

Second, we are seeing whether there are procedural things that hinder the investigation, things like numbers of approvals that have to be gone through, etc., or the turnaround time for actually producing the reports, those other peripheral things.

At this point we are not looking at the investigators and saying, "Hurry up; you are taking too long." We are saying, "You have to start examining the process in these cases and see the other elements." We will get to the point where we hope we can cut down a great deal of the time and then through analysis we can look at them.

The one thing Dr. Hill has said he does not want is for the quality to be reduced at all. He reminds me that we have also set up a council of assistant directors. Assistant directors are those people who are in charge of the various teams. I meet with the council of assistant directors every two weeks to talk about specific procedural problems within the group. They now have input into how the system can best be altered or improved upon.

Mr. Callahan: Is there a backup base to this, so if you lose it you have--

Mrs. Meslin: You are talking about the--

Mr. Callahan: Computer system.

Mrs. Meslin: --computer system.

Mr. Brookwell: The computer itself is not backed up. We have one central processing unit; there is no backup CPU. It is not that kind of operation. We do have daily and weekly backups of information so that if we were to have a disc drive failure of some major proportion, we could recover the previous day's backup information and carry on from there.

Mr. Callahan: Does that have to be keypunched to put it back into the machine?

Mr. Brookwell: Only the day's work that was lost between the last backup and the failure.

Mr. Callahan: So you would not lose everything.

Mr. Brookwell: No.

Mr. Callahan: The second thing is to carry on with Mr. Philip's question. Are the various bodies, particularly those that are identified as being slow responders, being made aware of the fact they are being watched by the computer? Maybe it will speed them up a little.

Mrs. Meslin: No, we have not taken that action yet. At this point we are trying to get the computer on line, and then we will start to compile the information. I think we will get to the point where we will meet with the senior people in the ministries and actually have data for them. It would be unfair to do it in any other fashion. You have to have something to show them.

Mr. Callahan: Excuse me, Mr. Chairman. I got the impression that Mr. Philip was trying specifically to identify the names of those individuals. I would find that offensive. Identifying departments is one thing, but by identifying names we would be dirtying the whole focus of the Ombudsman. We would almost be doing a reverse. I would prefer to keep it at the department level.

Mrs. Meslin: The primary intention is that we look at the ministry or board and at the departmental function. My idea is not to single out people.

Dr. Hill: Let me speak to that briefly. In answer to part of your question, Mr. Callahan, I mentioned earlier this morning the top-level executive committees from the ministry involved and the Ombudsman's office. We have a senior committee, a deputy and other people working with us to deal with problems in the ministry. That statistical information would be excellent to use in meetings of that nature--not identifying people, like "Joe Blow did not answer my letter in time," but saying, "You have X letters that have taken so long to get to us." This is where we can work this off so we can get a better and faster response rate.

2:40 p.m.

This is a tool that can be used with those executive committees I am now trying to establish with each ministry and only that. We are not thinking of talking about a particular individual who is doing something of that nature, but about the ministry itself not responding in X volume of cases the way it should.

Mr. Pierce: On page 5, item 6 deals with the ability to communicate with the regional offices. Do you operate with telexes or some other form of communication, other than telephone, so you do get inquiries in writing as opposed to just conversation?

Mrs. Meslin: Yes, we do.

Mr. Pierce: Then you do not have to depend on the mail service. But you do have telexes in the regional offices?

Mrs. Meslin: They are telecopiers; so it is pretty instant.

Mr. Hennessy: Just to put the shoe on the other foot: If your department is not answering the letters promptly, what action can we as members take? You can cover the other side, go to the ministries and say, "You are not doing your job." What about your department? If some area is not doing its job and somebody is slow in sending out a reply, what action has been taken or will be taken in that respect?

Mrs. Meslin: First of all, the computer process does not only look outside but looks inside as well. Every action that is taken on a case, either by an investigator or outside, is documented. When we look at those cases, we have certain standards we hope to be able to set for investigators. As I said earlier, when a letter comes in from anyone, we at least acknowledge it. It is brought in and acknowledged to that person within five days. Now that we have the new equipment, we keep records of that kind of thing.

In addition, if members who have referred cases are not getting responses, I would hope they would let us know because we have made the commitment that members are going to be kept up to date on what has happened with their cases.

Mr. Hennessy: It is customary for most politicians to send a copy of the letter the person wrote to them. If a file does come to you which is in that member's riding, the member should at least be informed of what is going on so that in case he does get a phone call from that person, he need not say: "I do not know anything about it. You will have to see the Ombudsman's office." It makes the member sitting in that riding look as if he does not know what is going on.

The average person thinks the member knows everything that is going on. This is what I am trying to say. You cannot say to them that you get so much literature and so many letters that it is hard to remember everything. We are the fall guys when it comes

down to that. They want to shoot you or kill you or hang you or whatever it is. They are very vocal about what they want to do. They feel you are under their thumb, and their vote is the only one that is going to make the difference.

Mr. Callahan: Where is your riding anyway?

Mr. Hennessy: I am speaking for most of them.

Mr. Philip: I do not think I would want to go into your riding unarmed.

Mr. Hennessy: I do not think you would do well in my riding.

There are two sides to the coin. What I am concerned about is that somebody could be unjustly put on the spot by this document, whether it is a member or a minister. It is not hard to say who would get up in the House and say it. The idea is that it would be a cheap shot or something he did not know anything about. In politics, they shake hands with you here, but they are waiting outside with a bomb. This is the nature of the game.

To have the elected official knowledgeable about what is going on, it is only fair that a personal and confidential letter could be written to advise him that this person may come to the House. Or the person may meet the member on the street and ask him about the thing, thinking the member knows everything about it, when he does not know a thing about it.

Members should be kept aware of what is going on. That is what I am concerned about.

Dr. Hill: Whenever a member writes to me or phones me with a question or a query--and I get a fair number of them--regarding the fact that he has not heard about a matter he has referred to me or has not received any answer, I immediately have the staff person involved come in to me and give an explanation of what is going on. Then I turn around and write back or call back that member and let him know what is going on. Generally, I step into that kind of situation personally and talk to the member about what is happening. You get a fairly immediate response. I want to assure you that would be the case if I heard from you.

Mr. Hennessy: I am looking for the member to be notified, if a case in his riding comes up, with a carbon copy of the letter of reply going to him. It has to be marked "Personal and confidential," because he cannot interfere in anything.

Dr. Hill: If the member brings it to our attention, it is the case the member has brought; but if it is a case the member has nothing to do with whatsoever, the statute says very clearly I cannot do that. If it is not brought by you, I cannot do that.

Mr. Bell: Mrs. Meslin, can I look with you at the accompanying documentation? Perhaps we can take the committee members through some of the statistics on a comparative basis so they can get a feel for the material.

I am referring to the documents that are headed "Complaint Statistics." The first one is for 1984-85. They are numbered consecutively to page 9 and there is an accompanying page dated August 23, 1985, about the 42 complaints requiring more than 33 months. Following that we have the bar graphs.

First, dealing with those bar graphs, Mrs. Meslin, I was correct, was I not, in categorizing those graphs as giving a graphic presentation of much of the material contained in the accompanying pages?

Mrs. Meslin: That is correct.

Mr. Bell: Another way of viewing the same things and the point you wish to make primarily for all four categories is that whatever is being closed or reported upon are done. The substantial majority are being done within the shortest period of time. The manner in which you keep your statistics bears that out.

Can I turn to the comparative material, particularly the first page of the 1984-85 material? Item 1 is factual. In item 2 you can see the comparative basis of the years in question. The point that should be made, though, and I am not exactly sure of the year, is that somewhere around 1981-82 or 1982-83--Mr. Mills perhaps can help--there was a change in the manner of data keeping and, therefore, by switching to certain things there was an automatic increase in the number of things you retained or did. Is that not so?

Mr. Mills: Right. Starting in 1981-82, we began to count what were fast actions.

2:50 p.m.

Mr. Bell: So it is an apples-and-oranges situation. Those statistics cannot be read in a straight-line fashion as showing an increase in the work load or the business the Ombudsman has done. Probably since 1979 and 1980, in the net result, the business has remained relatively stable in terms of the number of matters coming to the office. Is that not correct?

Mr. Mills: That would be my view.

Mr. Bell: Okay. I am sure one of the things you are going to do under item 3 is to change your terminology. It is not terribly flattering to be reported as resolving only 1,100 out of 13,000 cases, and you are not doing yourself a service by calling it that. But for whatever "Resolved Involved" means, this is the lowest year of the years you have reported. Is that an anomaly, do you believe, or is it indicative of something that is happening?

Mrs. Meslin: Are you saying this is the lowest year?

Mr. Bell: Under the "Resolved Involved" category--and going in I acknowledge that this statistic is not truly reflective of the office's activities and involvement and resolution, but it is how you categorized it--when you examine the statistics for any of the other years--and this is one of the statistics that have

been relatively consistent in the way you have categorized them--this is the lowest of all of those five years, six fiscal periods.

Is that an anomaly, do you believe, or is something happening to have, for example, about a 20 to 25 per cent reduction from one year to the next?

Mrs. Meslin: To me it is just an anomaly. I cannot explain it in particular, other than to say we have to change, as you say, the way we acclaim these things. We attempted to do it in the annual report. If you look at the centre spread, where we have, "Independently Resolved," "Complaints Supported" and "Investigation Discontinued," you can see we are trying to be a little more precise about it.

I still have problems with it, and the basic problem is what you raise. When you try to give the committee an overview of four or five years in which time the base of the way they count is different, it is a catch 22.

With the new equipment and the precise way in which we have begun counting this year, we hope we will be able somehow to clarify that. I have to be very honest. I cannot justify it. It appears to me right now to be an anomaly.

Mr. Bell: I should tell you that last time it happened, 1980-81 and 1981-82, we were told--

Mrs. Meslin: That is quite a difference.

Mr. Bell: We were told two things. One is that 1980-81 was Mr. Morand's so-called blitz, where a lot of dead wood and a lot of old dead wood got removed and they all got categorized. The next year just happened to be a low year. You can see it evened off back to the old 1979-80 figures.

Mrs. Meslin: You are talking about a difference of almost 1,000 cases.

Mr. Bell: Yes.

Mrs. Meslin: What you are talking about here is 300.

Mr. Bell: Yes. As I say, those two years were explained as anomalies.

Can we go down to number 4? Members, this will perhaps give you a sense of where the activities of the office are being generated. You have the total annual statistical figures at the bottom and you can relate to those figures the various matters that are both within the Ombudsman's jurisdiction--that is, things that his legislation permits him to investigate and report upon fully--and outside his jurisdiction.

What is remarkable in those--at least, taking it back to 1981-82--is that the number of outside-jurisdiction cases has remained relatively constant. What has changed is that there has

been a relative increase in the number of within-jurisdiction cases.

Again, in a way, it is apples and oranges, because I know there have been some changes in categorizing and in how you open and how you close, but I would like your comment. It seems there has been and continues to be, on a proportional basis, an increase in the number of jurisdictional matters that come to the office. Can anybody comment on that?

Mrs. Meslin: I think there has been. If you look at the time I am most familiar with, starting in late 1932, then 1983-84, 1984-85, both from the public education point of view, where we are now attempting to make people aware of the office, and of what is jurisdictional, you are going to see there is an increase and you are going to see more. In addition to this, very often I have found in looking at some of the cases that something which might, at first glance, have appeared to be outside our jurisdiction could, in fact, be within jurisdiction, depending on what one thinks the problem is.

In discussing those matters with the assistant directors, we are trying to make them more sensitive to complaints coming in because of the frustration with the number of cases that appear to be outside jurisdiction. When you reread something carefully, you may well find there is a jurisdictional element to it that you can become involved in in an attempt to help.

Mr. Bell: Okay. Can we turn over the page? It has always been my view, since we have looked at these statistics, or since you have reported statistics on these bases, that items 5 and 6 are the ones that are closest to the committee with respect to where the committee gets involved and how. Sometimes it has been referred to as the so-called pure Ombudsman function, the one that goes from the beginning of a complaint received to the end, when a report is made and ultimately implemented or resolved. Again, on a comparative basis, with the exception of the 1980-81 anomaly, there is not a substantial change in the number of cases settled, or settlement results I should say, in the year.

What is different from other years is the number of cases determined in favour of the governmental organizations. If you look at all of the other years, if you wanted to keep a score-card, the aggregate findings favour the governmental organizations. This is the first year that the opposite has occurred. Again, the question is, is that an anomaly or are we seeing something different?

Mrs. Meslin: I do not think it is an anomaly in this case. I think it is--

Mr. Bell: All right. Before you complete--okay. Sorry. Complete the answer to that.

Mrs. Meslin: No. I will wait. You can ask me directly.

Mr. Bell: All right. I tried a little exercise on my deck yesterday in the sun, and I wrote in some names on this

chart. At the extreme right, prior to 1979-80, I wrote "Arthur Maloney." Over 1979 and 1980, I wrote "Hoilett" as the temporary Ombudsman.

Mrs. Meslin: Keith Hoilett?

Mr. Bell: At the extreme right, pre-1980, I wrote "Arthur Maloney." Over 1979-80, I wrote "Hoilett," and again, this is not absolutely accurate, but I think he was the temporary Ombudsman for some part of 1979. Over 1980-83, the next three years, I wrote "Morand." Over 1983-84, I wrote "McArdle." Obviously, Dr. Hill, I wrote your name on the last column, the column where the change exists.

I did that to ask you to comment. With that added information, are we seeing a change? Specifically, and I have to be careful how I word this now, but are you going to bat more for the complainants perhaps than has been the case in the past? This is not a right way of putting it, I guess.

Mrs. Meslin: I think Dr. Hill should answer that. I started to say it was not an anomaly, but I think Dr. Hill is the best person to answer.

Mr. Morin: He is fighting more for the little guy, and that is what it shows.

3 p.m.

Dr. Hill: That is what I said when I took over. I am looking in a much more rigorous way at the complainant's complaint. I am trying to at least make certain that they get every look-see at the matter, and that may be the reason for this. I do not know. It could be an anomaly, but I do not think it is. I am trying to look more rigorously from the complainant's standpoint at what is coming to me. It does not negate my obligation with respect to the governmental organization. I am giving a more rigorous look at the little guy, that is true.

Mr. Bell: When you look at number 6, it really comes home, and I think your comments are corroborated, because in relative terms you have not increased the number of recommendations that you have made. By the way, members of the committee, this statistic stands for the number of subsection 22(3) reports that Dr. Hill issued over his signature for that fiscal period. This is not the year where the greatest number of recommendations have been made or the greatest number of reports. Again, you can disregard 1980 and 1981 because they are anomalies. Of the 168 and 146, there were 133 Workers' Compensation Board cases on one issue, so to have an accurate review you subtract 132 and that gives you the true comparison.

But look what has happened in this year. Whereas there were not the highest number of recommendations made, there was by far the highest number of recommendations that have been denied. One could interpret that as saying you have taken a position vis-à-vis issues somewhat differently than your predecessors did, and the governmental organizations are initially digging in their heels.

Mrs. Meslin: We should make the committee aware of the fact that even with 58 recommendation-denied cases listed, we came down to the committee at one point with only 19, which is down to four, so that a lot of the 58 have to do with communication with the minister, where the ministry appears to dig its heels in, but in discussions and exchange of letters and communication we resolve the case together. That is indicative of the way we are working.

Mr. Bell: I want you and your office to have as much of the credit for that as you deserve. Out of curiosity, if nothing else, of those 54 that you resolved, how many were resolved with a consideration that at some time somebody from those governmental organizations had to appear before this committee? As another way of asking it, how much did this committee help or hinder?

Dr. Hill: I think it has helped substantially.

Mr. Bell: In what way?

Mrs. Meslin: If you look at the annual report, you can see that 21 of the 58 cases were with the Ministry of Correctional Services. We have indicated to the committee that these involved the ongoing senior committee between Correctional Services and ourselves, so I think that speaks for itself.

Mr. Bell: In what way has the committee helped?

Dr. Hill: I think the ministries are saying to themselves, "We would rather sit down and hash it out with you than go before the standing committee," to put it in its most simplistic form. "If the door is open for discussion and 'mediation,' we would rather do it that way with you, since you have opened that door specifically, than sit down before the standing committee and do it." I think that is essentially what they are saying, and there is nothing bad about that.

Mr. Bell: Of the 54, without naming names, how many practise brinkmanship? That may be obvious by the 19 that were still hanging on. You know what I am saying. How many of them held out to the last possible minute?

Dr. Hill: About half maybe, would you say, Eleanor?

Mrs. Meslin: Easily.

Dr. Hill: About half within the last while. Do not hold me to that figure but I would say approximately half.

Mr. Bell: All right, but nevertheless some. Is there a way that the process employed between your office, the Premier's office, the Speaker and this committee could be accelerated so that you could get a more immediate benefit in your discussions to resolve issues?

Dr. Hill: I would have to think about that.

Mrs. Meslin: It is a difficult one.

Dr. Hill: That is a toughie and I would have to give that a little thought.

Mr. Bell: Other than reporting each case individually.

Dr. Hill: Right. Michael is suggesting--and I think he is right--brinkmanship is involved because perhaps the frequency of our meetings should be stepped up. If our meetings were more frequent with the top officials from those ministries--and I am doing this now; I am getting more personally involved and sitting down with them well beforehand and on a more frequent basis--that might be an answer to your question. I am not sure but it would be very helpful.

In many cases months would go by before, all of a sudden, bam, they come in and want to discuss it. It may mean I have not put enough pressure or discussion or whatever on those ministries to sit down earlier than that. I am trying it.

Mr. Bell: But that requires you to dust off the old special-report function.

Dr. Hill: Yes.

Mr. Bell: If we finish all our business by next Friday, there is not a lot to talk about in January unless you give us something to talk about.

Can we deal with something I know is not as pleasant as what we just talked about, the average durations, the closing? I do not want to get into a discussion about what is meaningful, average time on a file or whatever. It is interesting to see that, whatever that statistic is worth, it has gone down by some days, thereby proving it is worth something.

Can we look at, on a comparative basis--I am starting at page 4 of the accompanying statistical material under Complaints and Information Request (Closed in Files) through 1984-85. Mrs. Meslin, you made a comment that there has been general improvement. Can we see what it is? I have taken the liberty of giving some comparative statistics on the same page.

If you just bear with me, I have noted from the material that under the jurisdictional category, the up to three months, this last fiscal period you had 93 outstanding and the previous you had 141. Almost 50 files have been taken out of that category. If we go down to the four-year level, there were 28 in the last fiscal period and 27 in the previous. In the balance, the ones in excess of four years, there are four in the current period and six in the previous. Just finishing that, in the nonjurisdictional, there is one in the current period and there was one in the previous period.

I know it is impossible to identify that one, for example, as the same one but I guess my rhetorical question to you; Mrs. Meslin, is, with the exception of the sub-three-year category, where you have made meaningful progress, how can you say in the other that you have made any progress when we are substantially dealing with the same statistic?

3:10 p.m.

Mrs. Meslin: It is all in the way you read statistical data. I did some figures myself on average durations and found that average duration in all categories in 1983-84 was 197 days and 1984-85 was 170 days, which meant we had an improvement of 27 days.

Mr. Bell: Is this in the jurisdictional?

Mrs. Meslin: No, average duration in all categories. We have done it under average duration in all categories, jurisdictional only, nonjurisdictional and information requests.

Mr. Bell: Could we save time? Could you have those typed out and perhaps just pass them on to the clerk at a convenient time and we can include them in the material?

Mrs. Meslin: Sure. What it indicates overall is that there has been an improvement in each of those categories. The jurisdictional shows the greatest improvement. It is a 35-day improvement over last year. The nonjurisdictional is only an eight day improvement. The total of all is 27 days.

As I said to you, it depends on how you read the statistics as to what it proves. As we have said before, I have a great deal of difficulty when I look at the chart that shows jurisdictional complaints closed. To me, jurisdictional complaints are our lifeblood. You can see that the majority of cases are closed within six months. When you start to add in the figures which are less than 10 per cent, at the very end of that spectrum--much less--you have an imbalance that throws the duration completely off.

We should be aiming at a process which would take cases that can be expedited quickly, and do so. As we have shown in the chart of over 44 cases, those cases that are highly complex and difficult, take a great deal of time and would be impossible to shorten by more than a month or two over three or four years should not be used to make us look as though we are not handling cases expeditiously.

This has been a running dispute with the committee. At the beginning, when I came into this organization, my concerns were--and are--not to delay. But when I looked at some of the cases--and the example I gave you was the hearing loss cases--there is no way in this world that the Ombudsman's office could have handled them more quickly when the external forces were such that medical reports took eight or nine months to go to the Workers' Compensation Board and not to us, WCBs response to us took another eight or nine months and a request for a report to be issued took two years. How can you take such figures and drop them into the pot of the number of cases we are handling and say, "Look, you are handling cases and it is taking you too long to handle average cases"? It is an unfair way of looking at it.

Mr. Bell: Your comments are appropriate and well made. There is an inherent problem--and again understand where the committee comes from. Some people argue that the committee sees only the tip of the iceberg and only sees it two or three weeks in the year and at the end of the process, i.e., recommendation-denied cases, while you and I know those cases take the longest time. They always have and probably always will.

For example, one of the cases we would have looked at, if you had not resolved it, came to your office in April 1981 and the report was signed by Dr. Hill in August 1984. One should legitimately continue to ask, "Why does it take that long?" If the answer is, "Well, we have somebody who does not answer us," or, "Somebody says he is going to do something and does not do it," then maybe that is the answer, not, "We are improving our procedures," or, "We are becoming more technically efficient."

Maybe it is time to call a spade a shovel and to say, "We cannot do it any faster because these ministries or governmental organizations are dragging their you know whats."

Mrs. Meslin: Mr. Bell, in fairness, it is both situations. That may very well be the case, but we want to accumulate data to prove that is the case and to give the ministries an opportunity to respond, when they are presented with data that says: "You are consistently responding to our letters in four months. Is there something you can do about it?" That is on the one hand. On the other hand, we have not for a moment said our internal procedures are as good as they can be. What we have attempted to do is look at the organization, look at the equipment we are using and see if that, too, can help it.

We are pledged to reduce it. What disturbs us is that we seem to be always responding to these minimal cases that, at this time, look to us as though they cannot take any less time. We are looking into it. I do not know how else I can help the committee.

Mr. Bell: In capsule form, is the explanation for the 27 or 28, or whatever, that have been kicking around for up to four years that, "They are the categories we are doing as fast as we can, thank you, and they will be done when we complete them."?

Mrs. Meslin: We are in the same boat as you are. These cases are closed. We can analyse the heck out of them and tell you that one particular ministry took this many months or years to respond. What we are trying to do now is develop a system where we can monitor it as the case progresses so we know that when we asterisk something where nothing has been done for a month, then the investigator has to respond. We have to be able to control the way the process works on a day-to-day basis, and that is what we are attempting to do.

Dr. Hill: I want to make a quick addendum to that. In addition, I am saying I am hopeful about the reduction of even this part of the statistical problem within the next year or two. By building a better relationship with those ministries, I think that will come through. You drag your feet when you do not like

somebody. I think that has a lot to do with it. I really believe if we develop, which we are doing, a better relationship with those ministries, we are going to get a better, faster response time, even with those long, tricky cases that are before us. I think this is what we are trying to do and I think we are going to do it.

This is a large part of the problem. If somebody does not like you, they are antagonistic to you and even though they do it, they quietly take their time in responding to you. I intend to end that as soon as I can.

Mr. Callahan: Just following up on what you are saying, and maybe I am missing this entirely, particularly with this equipment you have now, if it came up with an asterisk, would there be anything inappropriate in a particular type of letter going out from the chairman of this committee, saying: "We note this file has been carried on for X number of months, years, or whatever; if there is not some appropriate response to it, we wish the matter to come before the board immediately."?

Dr. Hill, I recognize you are saying it is better to be on a friendly basis with these people and to develop a rapport. I am sure there will be areas, even with the most friendly relations, when you are going to have people who are going to put you on the bottom of the pile type of thing. It seems to me if this committee is going to be of any assistance in that regard, particularly with the ones that have asterisks for very long delays, that something going out from this committee would prod them. Is that going to make relations more difficult?

3:20 p.m.

Dr. Hill: That might be difficult because then you have to begin to query the function of the standing committee to get it to that administration, that part of it, then later on down the line, when you are really at the end of the line, you have to judge, adjudicate and deal with the whole process as we come before you. It might jeopardize or compromise your position a bit, I would think, especially a bit later on when we hit rock bottom and cannot do any more and we have to come to you as we are doing now.

Mr. Callahan: In terms of our objectivity.

Dr. Hill: Exactly. I think it might very well put your position as a standing committee in a bit of jeopardy, because you have got into the administration before the thing has ended. I may be wrong. My lawyers may tell me otherwise. Mr. Bell may say otherwise, but I would think he would want to stay out of that.

Mr. Callahan: Even, I suppose, to approach it from a different angle, if you were to send out the letter and send a carbon copy to the chairman of the standing committee.

Dr. Hill: --be here.

Mr. Callahan: Same thing.

Mrs. Meslin: I think we certainly make a practice of keeping our complainants informed. With the delays that go on, we have to let the complainant know what is happening all the way along the line. Perhaps Mr. Bell has some comment.

Mr. Callahan: In the final analysis I think the delays reflect on a function that is very essential to the operation of a government that is sensitive to people's needs. But in addition to that, I think it is very important that with those delays not only does the Ombudsman's office appear to the public as perhaps--I mean, it falls on you; they think you are being insensitive. Yet if somebody in one of the ministries is doing it, it falls upon all of us; the entire government operation is being insensitive.

It seems to me the whole purpose of the Ombudsman's office is to bring some sensitivity, not just perceived but actual sensitivity, into the operations of government. That is where I am concerned, that all of this will, I hope, eventually fall together so that you will not have the problems you are having. Maybe if it is done the way you are suggesting, you will have a better relationship with these people in identifying those who are dragging their feet.

Dr. Hill: I think it probably will improve.

Mr. Baetz: You noted before that there are some instances in which the ministries are aware that eventually a case will come to the committee, and your feeling is that they would much sooner settle it with you. Would there be any point in establishing a general policy that no case will go for more than two years before it comes to this committee? I am just using an arbitrary figure of two years.

If ministries know that if cannot settle in the first year, they are surely going to have another deadline and they are going to try to settle in the second year.

Mr. Zacks: The problem with that is that in order for the matter to come to this committee, the Ombudsman must have completed his investigation and formed an opinion that he can support the complaint. In any case in which the matter is still under investigation, at the two-year point he has not formed an opinion yet because the investigation is still going on.

Mr. Baetz: That is, you are waiting for more information.

Mr. Zacks: We are waiting for more information--

Mr. Baetz: From the ministry.

Mr. Zacks: That is right.

Interjection: It is a catch-22 situation.

Mr. Philip: I think what Rueben is saying is that surely we sense that this committee could request, for example, when it is not a large number, that the Ombudsman and the related ministry

report to the committee and give an explanation on both sides of any cases that have gone in excess of four years. We are talking about four cases now. It would be reasonable to sit down with the ministry and the Ombudsman on those four cases and ask: "What is going on here? There are four cases that have gone on for more than four years."

Mrs. Meslin: But what you would get would be a discussion from the ministry of part of the merits of the case; in order to tell you, it would be talking to you about the case. The case is not completed for you to do your job. You would then be in the middle of the process.

Mr. Bell: But what is wrong with that? The courts do it all the time. If you have a problem getting the production of documents, for example, you go to the court for an order and you may or may not have the same judge who would hear the case. I think an explanation could be given of why things are not forthcoming without going into the merits.

By the way, the act requires you to report annually on the affairs of your office. We are into the so-called pure Ombudsman cases, the ones where the slugging is tough, and it may or may not go to recommendation denied. What is wrong with, as Mr. Baetz has suggested, perhaps arbitrarily setting a deadline by which you want replies to your subsection 19(3) letters within two years of the investigation? That puts pressure on two places: you and your office and the other side. What is wrong with reporting, without the details, on those governmental organizations wherein that deadline has not been reached? Subsection 19(3) may not be the best cutoff.

What is wrong with having that report received on a regular basis by this committee and the committee deciding to what extent it wants to hear from those ministries about why it has taken so long? We are going to do that with the Workers' Compensation Board without specifics in two days on systemic problems. If those systemic problems are resolved, you will get a large chunk of your work load cut away.

Mr. Callahan: I would like to pick up on what Mr. Bell said. It takes a little longer sometimes, but the Court of Appeal issues a list of the cases and sends it out to every lawyer of record on that appeal. If he has been dragging his feet, he has two alternatives. Either he can move his butt and get on that case and perfect it, or he can appear before the Chief Justice or somebody else to explain why he has been dragging his feet.

I understand from talking to Mr. William F. Shaughnessy that those lists go from five pages to about four cases. They all get them perfected because they do not want to appear and explain their reasons for delaying. That is done without any facts of the case being already out.

Dr. Hill: I am certainly not arguing against it, if I do not abridge any of my duties and if the standing committee is not hearing the merits of the case, which it is not. It is a proposal

we have not thought about before. I could be very supportive. I do not argue against that proposal at all. We would have to work it out.

Mr. Philip: In an analogous way, you have a case like that before us, where the WCB said it could not make a decision on a case because it needed an additional medical report, and you said there was enough medical evidence in the file to make that decision. There is no difference between that, where we are going to have to make a decision in one way or another, and our saying to you and the board, "Why is case X still dragging on for more than four years?" They may come back to us and say: "We need an extra medical report. The doctor is in Israel and the claimant is in the United Arab Republic." We had a case similar to that.

I do not really see the difference between what you are bringing to us in a specific case, where you say the board should have made a decision, but it is claiming it needs certain documents, which you do not think it needs, and us asking what is happening in this case and the board saying it needs the extra documents while you say it does not need them.

Mr. Zacks: One of the concerns I have with this process is that it might be a good idea to raise in a consistent way a general problem with a specific governmental organization. On a specific case-by-case basis, ultimately the Ombudsman has to take responsibility for how he investigates his own cases. He has the power to attain information under his act by summons. He also has the power under the act to prosecute. He has never initiated a prosecution. He does have the authority to bring the matter to the courts if he feels delay is being used as a tactic to defeat an Ombudsman's investigation.

Involving the committee is a major incursion into the Ombudsman's discretion on how he is going to investigate cases. There may be some cases where, in his opinion, it is necessary to take that length of time to properly investigate a case and at the same time fostering a relationship he thinks is important with a particular agency. Nothing would sour a relationship more than using the heavy hand of the Ombudsman.

3:30 p.m.

Mr. Philip: What we are dealing with is not just the matter of the substance of the case. We are dealing with the process and where there is a process breakdown, it seems to me that is within the jurisdiction of the committee. If you have cases that are running more than four years, that is a process problem and we should be concerned about those.

Mr. Zacks: I agree. There may be other factors, though, that the Ombudsman will bring to your attention that will indicate there is a reason for taking that length of time.

Mr. Philip: Surely then it makes some sense for the Ombudsman to be asked about those particular cases and, without dealing with the substance of the case, dealing with those that are delayed over a certain period. I do not know what the cutoff is. Four years gives you 28 plus four, which would be 32 cases. That is a large amount, but over four years it is only four cases.

I am not going to say any more than Mr. Baetz was saying about where the cutoff is, but there may be a time when the committee has to say, "For anything over a certain period of time, we want an explanation from whoever, be it the Ombudsman or the ministry involved."

Mr. Zacks: I do not think we would have any problem giving explanations.

Dr. Hill: This is a helpful recommendation and suggestion to our office. However, it is a very major one, and I might require a little time to respond more fully to it. This is so new and such a good idea that I am going to require a little time to sit down and bat this around with my staff and come back to you on it. I consider it a helpful suggestion; it is one we should not take lightly, and we should study it more carefully.

Mr. Bell: Just to focus that: As you report annually or otherwise on the affairs of your office, you might consider creating a new category of current investigations that are in your judgement being delayed by reasons out of somebody's text, yours or Eleanor's, "beyond your control." That is a great phrase but once you use it, there should be some process initiated.

I do not mean to generalize, but it is my sense that a lot of the people you deal with at the ministries or governmental organizations almost work backwards. When a complaint is received that looks like a biggie, they work from the average duration, including this committee, and that is a four- to five-year time frame. Lots of things can get lost in that period, whereas if that were all of sudden accelerated to a two-year period, for example, you would see it getting to the deputy's desk a lot faster than it might ordinarily.

Dr. Hill: You are quite right. I have thought about this too, and we should factor those cases out and try handling them in another way, but it is going to take us a little time.

Mr. Bell: I do not mean these comments to criticize ministries or governmental organizations, but let us be realistic. We work in terms of relative criticality, if that is a word, and it is the burning bush that gets the water. If you moved your--

Mr. Baetz: The squeaky wheel; try that one.

Mr. Bell: The burning bush gets the water. It is a biblical phrase.

Mr. Bell: If you put yours up on the priority list, things might happen.

Dr. Hill: It is a good idea.

Mr. Baetz: Without setting any kind of arbitrary deadline or anything like that, we have to keep in mind that to bureaucracies and organizations, what is four years, six years or eight years? We are dealing with individuals here. If it goes on an undue length of time, the point has been made before that

justice delayed is justice denied. It is relevant and appropriate for us to be thinking in terms of some kind of time limit to these things. It will vary from case to case, obviously. You may even find a situation where you come and say, "This has gone more four years," or more than three years, "but there are reasons for feeling that it should go another few months or something."

Dr. Hill: You are talking about systemic problems; it is a systemic problem.

Mr. Callahan: It does tend to get a message out to them that they cannot sit back and put you at the bottom of the pile. Just to go back to that list that the Ontario Court of Appeal has, it is nothing to pick up the phone and call the Attorney General (Mr. Scott) or whomever and say, "The reason it is not going on the list is that we do not have the transcripts," and on consent it is taken off the list. I can tell you, and I am sure I would be backed up in the legal profession, you put that on the bottom of the list, and you do not react until you get this letter from the chief justice. You know what I mean. You are into a motion like that.

Mr. Philip: I wonder, from a systemic point of view, if it does not make some sense that certain types of problems have to be resolved within a certain period of time; otherwise, it is not worth resolving them.

For example, if you have a complaint about an Ontario student assistance program grant not being granted, if that is not resolved in two months, the kid drops out of college and loses his year. It is as simple as that. I sent one over to your office. She may last this year because she has relatives and worked this summer and so forth, but if she does not get that grant next year, she is out of college. It is as final and simple as that. Some kids would be out a lot sooner. Luckily, she has enough money saved up that she can pay it.

It may be that there are certain things, not to forgive the others, that are given some licence for taking longer, but there are certain things such as OSAP where, if they are not resolved within a month, your client disappears. He says: "What the heck? It is no good to me if I get the grant next year. I am not going to be in college next year. I lose my year."

Mr. Zacks: We are aware of those problems; in fact, we have a procedure to take that into account. In essence, what we do is give an oral subsection 19(1) letter on the telephone. We telephone the agency head and tell them there is this urgent situation. We have cases with shorter time frames, where persons are on some type of family benefit assistance, and they are appealing that they need interim assistance. The immediacy is now, and we deal with them on that type of basis.

Mr. Bell: I have no further questions, Mr. Chairman.

Mr. Philip: I wonder if you can help me with the statistics on page 1 of your complaints statistics for 1984-85. If I take the ones that are within the jurisdiction, which is 5,366,

and I subtract from that the resolved, the 1,455, I get a figure of 3,911. I am not quite sure what happens to those. Where are they? What is the breakdown of them? Am I missing something?

Mrs. Meslin: Would you repeat that?

Mr. Philip: Yes.

Mrs. Meslin: There are 5,366 within jurisdiction. Is that what you are saying?

Mr. Philip: Yes. The number that are resolved, be it "resolved/independent" or "resolved/involved," is 1,455.

Mrs. Meslin: Yes.

Mr. Philip: Can I subtract that from those within the jurisdiction and get a figure that is useful to me?

Mr. Bell: No, you cannot.

Mr. Philip: Why?

Mr. Bell: Because the 1,110 and 345 are not all jurisdictional.

Mrs. Meslin: That is right. They are not all within jurisdiction.

Mr. Philip: But the resolved 1,455 are?

Mr. Bell: No.

Mr. Philip: They are not all jurisdictional?

Mr. Bell: No.

Dr. Hill: They are conferring.

3:40 p.m.

Mr. Bell: Can I help? There was an example about three years ago of how you could resolve a nonjurisdictional case that you were supposed to refer elsewhere. I believe the example was that somebody came to your office complaining or concerned that they were turned down for unemployment insurance benefits. They came with the application form, and the person who saw them realized very quickly that the form was completed in the wrong way. That would be noted in your office as resolving the matter, even though it was nonjurisdictional; and if that were the case, you would report that as one resolved in the 1,455, even though it was nonjurisdictional.

I do not think we have ever asked--I do not know whether the data are available--you to break down the 1,455 between the two.

Mrs. Meslin: I think it will be now, but I think the distinction is that "resolved/involved" is jurisdictional, and

"resolved/independent" can be both. That is the example you were given. Unfortunately, it is a mixed statistic in item 3 and a pure statistic in item 4, where you are talking about "within jurisdiction." So you cannot make that comparison.

Mr. Philip: Suppose I go to your office and I say, "OSAP has not given me a grant, and here are the reasons." You say, "You do not stand a chance of winning on this one, because the rules are such." Then I simply say, "Thank you very much," and walk away from the interview, satisfied that I do not have a case. Where does that appear statistically? Does that appear statistically as a result?

Mrs. Meslin: No. It could be "investigation discontinued," under "withdrawn," because the person would not make it an official complaint and would withdraw.

Mr. Philip: So it is going to be even more complicated to analyse these figures when we start getting your--what was the word you used for the extra people out there who will simply be intake workers?

Mrs. Meslin: Stringers.

Mr. Philip: You are not sure what those are. You will end up with what amounts to a case on it that you probably would not get if they were not stringers, if it were kind of mainline.

Mrs. Meslin: Your stringers, much like the intake officers, have to be well trained to the extent that, if they are unclear as to whether something is jurisdictional or not, they pick up the phone and they ask. They make sure about the category. We are going to have overlaps because of the nature of the complaints that come in. Obviously that is the trouble they have had in the past: trying to determine how to categorize it.

To me, in the example you gave, you could say: "Well, I will quickly fill out a form, and that is a resolved case. Good statistics." Or someone with a little more on the ball might say to the complainant, "Do you still want to make a complaint?" The complainant would say, "Not now," and they would say, "Okay." Then it is not resolved. It is an investigation discontinued, because the complainant has withdrawn it. It is very difficult. The reasoning in both is perfectly logical.

We have to go by the statistics we get. Very often we go behind them, and they are as difficult to try to analyse as your example.

Mr. Philip: It seems to me that if you get somebody who is tough on the intake, you will get a different type of statistics than if you get somebody who is a tabula rasa and takes everything. Manpower can skew their figures by doing the same thing.

Mrs. Meslin: We are all human. I think you have that situation. You will have people who are more adept at picking up some way of getting to handle the case than others. It is a

judgement call. You try to train them as well as you can and hope for the best.

Mr. Philip: Is there any way of getting a figure on the number of people who walk in with a complaint and actually get to the stage where it is resolved in some manner?

Mrs. Meslin: With an information request or an actual complaint? It depends on what they are coming in with.

Mr. Philip: How many jurisdictional complaints would actually get to the resolved or independent stage? Is it possible to get that kind of "resolved/involved" or "resolved/independent"?

Mr. Bell: I think all you can answer now is that it is no more than 1,455.

Mrs. Meslin: That is right.

Mr. Bell: It is probably 1,100 plus 345 minus X.

Mrs. Meslin: It may be less, but it is no more.

Mr. Bell: It is no less than 1,110. It is no more than 1,455.

Mrs. Meslin: That is right.

Mr. Philip: But you would not be able to say what the total intake was to compare to that 1,455?

Mrs. Meslin: I cannot now, no; we may be able to.

Mr. Philip: A number of people would walk in or make a complaint that would be jurisdictional, but that somehow gets--

Mr. Bell: No, I do not think you can, because your reporting is retroactive. You report by matters closed; therefore, it is impossible to trace.

Mrs. Meslin: But we build a statistical history of the case as it progresses, all the way along.

Mr. Bell: I think Mr. Philip is asking, to get that figure, let us assume it is 1,455, which are all jurisdictional, how many do you have to get in the door to distill down to that figure? For every 13,458 do you--

Mrs. Meslin: No; I see what you are saying.

Mr. Bell: The reason you cannot do it is that you report retroactively and you do not identify--it is probably impossible to do, perhaps on any statistical basis.

Mrs. Meslin: I do not know how.

Mr. Bell: No, I do not think you can. All you do is you work with these figures on a comparative basis and you say, "Mr.

Philip, it took 13,458 to close 1,455 in this way," as it did for the other years.

Mr. Philip: I guess I am saying that the statistics on the next page of "resolved in favour of the complainant" do not necessarily mean much if there is some way of skimming only the more deserving cases.

Mrs. Meslin: I am sorry?

Mr. Philip: If people walk into my office, I might take one of two approaches. I might take every case, regardless of its merits, and open up a file and start doing something. In that case I could say I had resolved 25 per cent of the cases. Or I could sit down with everybody who came in and say to a lot of them, "You do not stand the ghost of a chance in hell with this, the law is against you or the rules are such," and not bother making out a case sheet. In that case my files "resolved in favour of the complainant" might be 50 or 60 per cent.

Depending on what the emphasis is, the trend on that front desk affects my end figure. With different organizations, there are trends that go through the organization of softness or hardness or whatever you want to call it, of reality versus unreality, or whatever term is the latest jargon. You see that federally with the Unemployment Insurance Commission and with Canada Manpower. You see it with other agencies, and it is reasonable to expect that kind of climate would affect the Ombudsman's office. Therefore, that figure may not be as meaningful, in comparing one Ombudsman with another, unless you know what the mood is with respect to taking the complaints in the first place.

Mr. Baetz: I guess this is what I was referring to on a different subject; it is more like the hazards of statistics in an operation like yours. I do not think we should get hung up by statistics too much, as important as they are.

Mr. Zacks: Is the question, what is the philosophy at the intake level or what is the training of intake officers, how qualified are they and what are their guidelines?

Mr. Philip: No, I am saying it would be meaningful to have figures of the total number of intake that are jurisdictional and then you can see whether there is an early screening or a late screening. It depends on where that screening is. If you turn away people early in the game, then your figures are going to be different than if you take them all the way up to resolved versus unresolved or in favour of the complainant versus in favour of the government organization.

If you are taking on a bunch of useless cases that do not stand any chance and you resolve them in favour of the government, you are going to have a lot of cases resolved in favour of the government side and that makes you look tough. Whereas if, at an earlier stage, you simply say, "Look, John Brown, you do not stand a chance, everything is against you," and do not even open up the case on him, then it does not show up in the statistic; it simply disappears into that great mass out there.

3:50 p.m.

Mrs. Meslin: It is a dilemma that you point out. It is a fact of the management and philosophy of any organization that you hope you train your people to do what you think is proper. If you are looking at bringing in cases, if you indicate to your staff, "What we really want is numbers, crunch the numbers; we want cases to look as though they are being solved left and right," you are going to get that, if that is what is permeated through an organization.

If an organization feels it is a viable organization that is there to serve and do whatever it can, then the staff look at it as carefully as they can. We still cannot have any hard-and-fast rules that a person is going to make a judgement that I would make. I just hope they are trained well enough and that their supervisors look at it closely enough and that we have indicated to them the philosophy of the Office of the Ombudsman.

Mr. Baetz: Is it safe to say that some of the very best service your organization provides to some of our citizens may never appear in any of your records? In other words, some very intelligent intake officer or investigator, call it what you like, may give some very good advice and that advice is, "Sorry, but you do not have a case." Surely that is a service too?

Mr. Zacks: There is an additional fact that occurs. An investigator may say, "The case suggests weaknesses, based on experience; however, if you want an investigation, you will get one." Nobody is ever shut out.

Mr. Baetz: No, no. But very good advice, useful advice, can be given to a citizen without it ever appearing in any of your statistics or any of your records.

Mr. Chairman: Any further questioning?

Mr. Bell: I do not have any other questions on the statistics. Mrs. Meslin, if you could give us that additional material, the comparative durations under the categories you discussed, it may be useful to the committee.

I have one other housecleaning item before we wrap for the day. Members will recall I reported this morning that whereas we had originally scheduled to deal with recommendation-denied case 6, there was a late Friday development which resulted in that resolution. Members might turn to volume 2, tab 6. I do not know whether Mr. Decker has distributed it to you as yet, but if not, would he, and would you put in the beginning of that tab the letter from Randy Reid dated August 30 to the chairman of the particular board of the general hospital? It is a one-page, four-paragraph letter. For record purposes, just stick that in the front.

I am going to ask Dr. Hill and/or Ms. Bohnen, who has appeared and is sitting at Dr. Hill's right, to speak to the matter. I take it that the Friday developments, including the writing by Randy Reid of this letter and whatever this letter

stands for, have been taken by you to be an adequate and appropriate response to your recommendation. Is that correct?

Dr. Hill: Yes, that is correct. Linda, do you want to speak to that?

Ms. Bohnen: That is correct, Mr. Bell. We regard it as a resolution of the complaint.

Mr. Bell: We spoke this morning about the resolution of these cases being to obtain substantially what you set out to do. Your recommendation, Dr. Hill--and I am looking at subpage B of the synopsis material right at the beginning of tab 6--is, "That the Minister of Health seek the appropriate amendments to regulation 865 under the Public Hospitals Act to require public hospitals to accept referrals from chiropractors (and osteopaths) for radiology services in hospital outpatient departments."

What the ministry has done is to write to the hospital in question to advise that the ministry does not take the view that hospitals are prevented by law from accepting such referrals.

There is a difference. It is somewhat less, but I understand, Dr. Hill, that you have good and sufficient reasons for accepting the ministry's position as it is at this time.

Ms. Bohnen: As is evident from the documents in the case, in this letter the ministry remained of the view that an amendment to the legislation or the regulation was unnecessary because of its legal opinion on the import of the regulation. That being the case, it no longer seemed appropriate to insist on an amendment that the ministry simply felt was unnecessary. It seemed, rather, that a more appropriate course of action would be to have the ministry notify the hospital board of its view, with the result, one would hope, of the hospital reconsidering its position on the issue and regarding itself as free from what was no longer viewed by its supervisors as a legal restriction on its actions.

Mr. Bell: Okay. In any event, you do not want the committee to do anything more with this case.

Ms. Bohnen: That is correct.

Mr. Bell: May I complete the Ministry of Health matters? There is some material. Let me read it into the record. As for detailed summary 7, which was resolved between Dr. Hill and the ministry late last week--not so late, members, that we could not pull the material out of your briefing material--your office has sent me a letter dated August 30, which attaches something like a memorandum of settlement prepared by the ministry dealing with what the ministry intends to do specifically under each of the recommendations.

You consider that to be inappropriate?

Ms. Bohnen: Yes.

Mr. Bell: All right. The real reason I am raising this--please forgive me for not giving you details--is that one of your recommendations is that the complainant receive, in the form of a reimbursement, moneys from the Ontario health insurance plan to the tune of \$11,900. Is it your understanding that this money will be paid as soon as OHIP can process it?

Dr. Hill: Yes, it will be.

Mr. Bell: All right. I was phoned some weeks ago by the lawyer representing this complainant, and I think I asked somebody from your office if he would undertake to advise the legal counsel as quickly as possible of this resolution. Has that been done?

Mr. Zacks: I have been trying to contact him without success, and I will continue to try to contact him when I get back to the office.

Mr. Bell: You certainly do not want us to do anything.

Dr. Hill: I think it was a satisfactory resolution.

Mr. Philip: Do I take that in tab 6, if the chiropractor was not able to receive the services for his patient after the board of the hospital had received this letter, if it still said, "We are not going to accept that kind of referral," he would then have to go back to the Ombudsman with a different kind of complaint?

Mr. Zacks: He may do that.

Mr. Philip: Then it would be nonjurisdictional.

Ms. Bohnen: It was always nonjurisdictional vis-à-vis himself and the hospital board. What he had done the first time he was turned down by the hospital was to contact the ministry with his complaint. If he went back to the ministry and if the hospital still refused to change its position, he could come back to the Ombudsman again. Then I think it would be jurisdictional again.

4 p.m.

Mr. Philip: Only if the ministry involves itself. If it says, "We have told the hospital we do not have any requirement that it accept only referrals from medical practitioners rather than chiropractors and osteopaths," if that were the ministry's position, then it becomes nonjurisdictional and the problem is still unresolved.

Ms. Bohnen: Except in so far as he could complain about an omission on the part of the Ministry of Health and the Ombudsman would then have to consider whether that omission was reasonable or unreasonable.

Mr. Bell: In any event, Dr. Hill, in view of the matters known to you relevant to this case, the ministry's position is now considered to be adequate and appropriate.

Dr. Hill: Adequate and the resolution has been satisfactory.

Mr. Bell: Without so stating it, the issue raised by this complaint is a substantive one and transcends whether a particular individual should be able to use the facilities of the radiology department at any particular hospital. Dr. Hill, as a result of recent discussions with the ministry and very recent information given to him, understands that is so. He is prepared to "leave it to the ministry" for the time being.

Mr. Henderson: I am commenting only. In calling that a resolution, it seems to me that somebody who was not very familiar with the procedures and so on would be a little red because if I am not mistaken, there is not any necessary resolution, if anything. The matters would still be outstanding in so far as there has been no resolution of the issue the chiropractor has complained about. Do I understand correctly that we are saying it is a resolution in that the ministry has taken a position which may be ignored as far as we are concerned?

Ms. Bohnen: If you mean there has been no resolution yet in terms of whether this chiropractor's patients can be referred to this hospital's radiology department as of today, that is correct.

Mr. Bell: In fairness, the recommendation, even if it was implemented, would not have done that either because all it would have done, as accepted by the ministry, would have been to start the process along the road to legislation. That puts the question of whether and to what extent the ministry should control access to hospital facilities by health care providers, not to confine it to the members of the medical and the dental professions. That is really the issue this matter raises.

Even though the ministry may have said "Yes, we accept in principle we will work towards those amendments," perhaps more than others in this room, you would know what discussions that will raise in various circles. No, this man or woman is not going to have immediate access to a hospital. Whether that happens at this particular hospital remains to be seen.

Mr. Chairman, that is all for today. Just repeating myself from this morning, tomorrow you are going to deal with a fairly extensive matter. Not to oversimplify it, it has to do with representations made by a minister of the crown as to the disposition of certain matters his ministry participated in. One of the things you are going to be asked is whether and to what extent making representations before a committee of the House, and perhaps on one occasion in the House itself, is sufficient to bind the ministry to a particular set of circumstances.

I do commend to you for reading, either this evening or before 10 tomorrow, the synopsis prepared under tab 1. A lot of work has gone into that synopsis. As well, if you have the time, starting at page 31 of the material in tab 1, and going for some 30 pages, to Dr. Hill's report and thereafter the response of the ministry, if you can get that under your belt, you will come well equipped to deal with the issue.

Is there anything you would like to say on this, Ms. Bohnen, before we shut it off for tonight?

Ms. Bohnen: Not if you will stop now.

Mr. Chairman: I would suggest that the committee remains and goes in camera.

Mr. Callahan: Mr. Chairman, before you do that, I notice the dates we have here are September 3 through 6 and 9 through 12, which seem to be less than the dates I was informed this committee would be sitting. Are we going to receive an additional number of dates?

Interjection.

Mr. Callahan: I see. These are the dates we can now rely on?

Mr. Bell: That is all we need. We will not need any more than that.

Mr. Pierce: What were the numbers of the pages you referred to again?

Mr. Bell: Where it starts at page 31 and goes to page 60. It is a 30-page report. Try to get through that plus the synopsis at the beginning.

Mr. Pierce: That is on tab 1, volume 2?

Mr. Bell: Yes.

The committee continued in camera at 4:07 p.m.

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Government
Publications

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
WEDNESDAY, SEPTEMBER 4, 1985
Morning sitting



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Lewis, R., Legal Counsel
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From the Office of the Ombudsman:

Bohnen, L. S., Director, Investigations
Hill, Dr. D. G., Ombudsman

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, September 4, 1985

The committee met at 10:08 a.m. in room 151.

ANNUAL REPORT, 1984-85
(continued)

Mr. Chairman: We have a quorum. I would ask the officials from the Ministry of Consumer and Commercial Relations to introduce themselves, please.

Mr. Simpson: Good morning, Mr. Chairman. My name is Bob Simpson. I am the executive director, business practices division.

Mr. Lewis: My name is Ralph Lewis. I am a legal counsel to the division.

Mr. Bell: By way of a brief introduction, would members turn to volume 2 of your materials and particularly to tab 1? That tab contains the relevant material you will be referring to today in your consideration of this case. As I mentioned yesterday afternoon, the document you will probably most frequently refer to is the synopsis, a five-page document that appears starting at the second page of the material. The first page is to assist you, if you do not like looking at people described by letters of the alphabet, and you can see who the players in the piece are. Obviously, Mr. Simpson is Mr. A. It is nice to see that Mr. A has finally revealed himself. Others may be relevant as we proceed on this matter.

The other document we will be referring to in some detail is Dr. Hill's final report, which starts at page 31 of the material.

The usual format in these cases is that Dr. Hill and appropriate members of his staff, in this case Ms. Bohnen, will describe to you the specific terms of the complaint, the conduct of their investigation, the findings made as a result of their investigation, the reasons behind the findings, their opinions leading to the recommendation, what they understand to be the ministry's response and their position in respect thereto.

We usually try to have the Ombudsman and his staff proceed through without many questions. As a matter of practice, I start off with the questions to try to draw out additional and relevant information. After I have finished, I shut up and then each of you in your turn, as you are advised and wish, will ask questions of the Ombudsman's side. When that is completed, we do the very same thing with the ministry representatives.

Unless committee members have any views to the contrary, I propose to deal that way this morning.

Mr. Chairman: Proceed.

Mr. Bell: Dr. Hill, do you have anything by way of introductory remarks that you wish to say before we ask Ms. Bohnen to take us through the relevant details of this case?

Dr. Hill: I have a very brief opening statement; it will take about two minutes.

Mr. Chairman, members of the standing committee and distinguished guests, what this case comes down to is really not complex, in my view, even though my report, the correspondence, and file documents are voluminous and complicated in themselves.

In my opinion, when a minister makes a clear, unconditional promise to take specified action to help a group of people in a field within his ministerial responsibilities, then he and his officials are bound to deliver on his promise.

In this case a former Minister of Consumer and Commercial Relations promised the complainants, a group of home owners, that their homes would be repaired to current Housing and Urban Development Association of Canada standards at no expense. They were promised that no distinction would be drawn between original and resale owners, and they were promised that every home owner who filed a deficiency list with HUDAC would get an inspection report on his or her house.

These promises were made on the public record: in correspondence with members of the Legislature and to the standing committee on the administration of justice. The complainants trusted that the promises would be kept.

Now, seven years later, the commitment to them is still unsatisfied. The homes have not been repaired. Inspection reports have not been sent.

In my opinion, the ministry's excuses for why the minister's promises have not been kept are insufficient, and I have recommended that the action promised six years ago be taken at long last.

That is my opening statement.

Mr. Bell: Ms. Bohnen, would you now start, for the committee's benefit and for mine, to review what you believe to be the salient provisions and the facts of this case? I take it that in so doing you intend to follow reasonably closely the synopsis that the members have in their brief material.

Mr. Poirier: Excuse me, Mr. Chairman, might it not be appropriate to present ourselves to our distinguished guests so they know who we are? In other committees we have done so. I think it would only be fair. We are not numbers.

Mr. Philip: I have asked the clerk to provide us with the normal name tags, and that will be done. In the meantime, it is a good suggestion.

Mr. Chairman: I will ask each member to introduce himself.

Mr. Shymko: I am Yuri Shymko, MPP for High Park-Swansea.

Mr. Poirier: Jean Poirier, MPP for Prescott-Russell.

Mr. Polsinelli: Claudio Polsinelli, MPP for Yorkview.

Mr. Pierce: Jack Pierce, MPP for Rainy River.

Mr. Philip: Ed Philip, MPP for Etobicoke.

Mr. Hayes: Pat Hayes, MPP for Essex North.

Mr. Sheppard: Howard Sheppard, MPP for Northumberland.

Mr. Baetz: Reuben Baetz, MPP for Ottawa West.

Mr. Bell: Just as an aside, I think committee members are to be commended for that. I wish it would apply in a lot of other forums I have attended.

Mr. Philip: Some of you have reasons to be anonymous.

Mr. Bell: Ms. Bohnen, I take it you intend, initially at least, to deal with the information in the synopsis.

Ms. Bohnen: What I would like to do is synthesize some of the material, because I realize there is a lot of it and you could hardly be expected to have absorbed all of it between yesterday morning and today, and then I will be happy to answer your questions. I think the place to start is to introduce the players in this piece. The legend at the beginning of your material helps a lot, but I am not sure the identity of all the players was made all that clear in the material; so I will start there if I may.

The complainants were a group of home owners, all of whom lived in a subdivision. I think they are mostly referred to in the material as a home owners' association. They had a spokesman who came with their complaints to the Ombudsman. He is referred to throughout the materials as either the complainant or Mr. D. Remember, if you would, that he stands for a much larger group of people.

I think the Ministry of Consumer and Commercial Relations needs no introduction. If it does, my colleague to my left would be able to do that for you. A couple of words are in order about the Housing and Urban Development Association of Canada. HUDAC, the new home warranty program, was the administrator of the new home warranty plan, which came into effect back in 1977. The legislation which created it was enacted by the Legislature, having been introduced by the Minister of Consumer and Commercial Relations.

The administration of the program was entrusted to what was essentially a trade organization representative of builders within the industry. They enacted a new nonprofit Ontario corporation specifically to administer the legislation. The plan is not funded by the government of Ontario; it is paid for by builder

registration fees and other assessments. It is governed by a board of directors, one of whom is an appointee of the ministry.

The plan reports annually directly to the minister and its bylaws are deemed to be regulations. It is not a governmental organization within the meaning of the Ombudsman Act. You have seen that issue raised before you before. Any investigations conducted by the Ombudsman into this complaint of necessity focused on the ministry's actions and secondarily on HUDAC.

As you know, this complaint arose from events back in the early 1970s when the complainants bought new homes in a subdivision between 1971 and 1973. This was, of course, prior to the enactment of any home warranties legislation in Ontario. Many of the homes turned out to have defects. Some of them had serious defects such as cracks in foundations and leaking roofs; other had defects which could probably be categorized as substantial defects and minor defects or cosmetic defects.

On their own, they did everything they could to get the builder to rectify the defects. Some of the home owners took the builder to court without receiving any great satisfaction. They took their problems to their municipal and federal representatives without much success. Eventually, they approached their members in the Legislature, and that led to the presentation of a petition on their behalf by Ross McClellan to the Legislature.

If I could just digress for one minute, I think there is no sense in masquerading the identities of the minister and members who acted on their behalf, so I will use their real names. Even though I will be coming to quotations from Hansard which name the builder, I will not be naming the builder.

10:20 a.m.

The then minister, Mr. Drea, had had some previous familiarity with these homes by the time the petition was presented. In fact, he had viewed some of them himself and he was very receptive to Mr. McClellan's representations and the plight of these home owners. He agreed to look into it.

Part of that was motivated by the fact that there was widespread consternation over the fact that even though this builder was somewhat notorious at the time for problems in his subdivisions, nevertheless by 1977 HUDAC had made a decision to register the builder in Ontario as a builder. These home owners were outraged that even though they had moved heaven and earth to get their roofs and foundations repaired to no avail, and had knocked on every door they could think of to get something done, in spite of that this builder was again registered and thus permitted to carry on building business in Ontario. There was that pressure behind Mr. McClellan's actions, Mr. Drea's actions and those of the other elected representatives who became involved in the piece.

That then led Mr. Drea to take some action, which will be the course of some of our discussions this morning. In the course of doing so, he wrote in person to Mr. McClellan, making a promise

that I think is worth putting into the record. After referring to his last estimates in 1978, when the problem had been discussed, he said at that time:

"You will recall that I pledged my endeavours to find a fair and equitable solution for these people. I am pleased to report that I have reached an agreement with the HUDAC home warranty program where these homes will be brought up to standard just as though they were covered by the warranty program, which came into being after they were built and occupied."

I think that is the first written statement, a letter dated August 22, 1979, to Mr. McClellan, making a commitment to do something for these home owners.

The next relevant statements on the public record about the minister's commitment, and I think it is important to quote as briefly as I can, come from the various Hansard reports of the matter. In October 1979 the standing committee on administration of justice was considering, among other subjects, workmanship and building standards, and Mr. Drea made some relevant statements. He acknowledged that the homes were built before HUDAC came into being but said:

"I think it was always implicit that the homes should be repaired, although the argument latterly has not really been that. It has been on the question of why the principals"--i.e., the builders--"were registered under HUDAC at the time."

"Okay. They are there. I have worked out an arrangement whereby all those homes will be repaired and I have communicated that. On the basis of what Mr. McClellan and Mrs. Campbell raised, those homes will be repaired...they will be brought up to standard."

"I would like to get those homes repaired by the end of the year if possible. But it will be done at no cost to the home owner."

I believe that, apart from the letter to Mr. McClellan, this is the first statement, October 1979, of Mr. Drea's commitment.

A couple of days later, in response to a question from Mr. McClellan, Mr. Drea said:

"The arrangement I have worked out is that the deficiencies will be remedied, whatever the deficiencies are. But for actual construction work, somebody would be brought in at their"--the home owners'--"convenience, free of charge to them, the place would be rectified up to the present standard."

Mr. McClellan then asked, "Who will be doing the repairs?" Mr. Drea said: "I don't think that has been decided yet."

The question was left of whether the builder would be doing it or whether HUDAC would be doing it, and if the builder refused to do it, then HUDAC would do it. But it would be done to HUDAC's specifications on the basis that if the person who had the

remedial work done was not satisfied with it, it would be done exactly the same as if he or she had had remedial work done under the HUDAC home warranty program and was not satisfied.

He then went on to say he wanted a situation in which home owners would not feel, "Okay, someone is coming in and I do not have a voice in it if he says the floor is straight." What this indicates to us is that the commitment to the home owners was made independently of any action the builder proposed to take, that no distinction was being drawn between the types of defects that would be rectified and that the home owner would have some say into what work ought to be done.

During the early part of 1980, inspections began to be made by inspectors working for HUDAC, and this led to additional discussion before the standing committee. In June 1980, Mr. Simpson, among others, appeared before the committee and promised that inspection reports would be provided to the home owners and that the remedial work would be done.

Time went on. Although inspections were being completed and negotiations were proceeding with the builder, no work was done, and the home owners continued to put pressure on the ministry, Mr. McClellan and Mrs. Campbell. This led to discussions before the standing committee.

Under questioning in November 1980, Mr. Drea said the commitment that was reached was that the deficiencies would be repaired "because I was not going to get into legalisms with the industry represented by the Housing and Urban Development Association of Canada." The very clear understanding was that HUDAC would commence discussions with the builder and that those deficiencies would be remedied by the contractor.

Since they had no legal power under terms of a registration or whatever to enforce this, the commitment was that if after these negotiations which involved all these inspections and finding out about the material the builder maintained his original position that he had no legal responsibility under the home warranties program to do anything, the home warranties program would step in.

Mr. Drea acknowledged at that point that an impasse had been reached with the builder and Mr. Drea had instructed HUDAC to break this impasse. He said, "We want that impasse broken or we are going to say the minister has the commitment from HUDAC home warranties program, and if this cannot be resolved, it will resolve it. How it deals with" the builder, "I don't know."

Mr. Drea then made a rather eloquent statement to the effect that he hoped this matter would not still be carrying on when these home owners were going into retirement homes in the 1990s. He promised that by December 12, 1980, which was the scheduled dissolution of the Legislature, there would be a game plan.

I apologize for going through Hansard, but it is very important to understand clearly and completely exactly what commitment Mr. Drea made.

What he said was communicated to the home owners. The association passed on his words to its members. This is the information which the home owners, our complainants, received. I will refer to a document which you do not have but which is referred to in Dr. Hill's report. It is a newsletter to the home owners' association dated December 14, 1979.

"The following are the highlights of the program: All homes will be eligible for repairs irrespective of whether at present occupied by original, i.e. first or subsequent owner."

Mr. Bell: This is a communication that passed from--

Ms. Bohnen: From the president of the home owners' association--

Mr. Bell: To the members.

Ms. Bohnen: --to the members.

Mr. Bell: Reporting on his understanding of what the minister or the ministry said to him about what would be done.

Ms. Bohnen: I believe it reflects his knowledge of what Mr. Drea had stated to the committee.

"All houses will be brought to the present home warranty standard if it is found that corrective actions are required. The extent of the repairs will be established as follows:" I am paraphrasing now. Each owner would prepare a deficiency list. That was done. This would be submitted to the ministry and HUDAC.

Each house would be inspected by the HUDAC building inspectors. That was done, although it took them time to do that. The owner would be notified by HUDAC about the type and extent of the necessary repairs. That was not done.

10:30 a.m.

In case of disagreement between the owner and HUDAC, disputed items would be reviewed by the Ministry of Consumer and Commercial Relations and its decision would be final. That was not done.

In our view, that is a pretty accurate understanding and recitation of the commitment Mr. Drea had made. The problem we get into, as our investigation has revealed, is that HUDAC had an entirely different understanding of what its commitment was. I think it is that misunderstanding between the ministry and HUDAC which has led to our present difficulties today. Thus it is worth spending a couple of minutes on what HUDAC thought its understanding was.

As you have read from our report, our investigation indicated that the problem with this subdivision and this builder was really the subject of a very brief discussion between the minister and HUDAC's governors at the tail end of the meeting set

up to discuss HUDAC's budget. It does not seem to have received any great or detailed discussion. Perhaps it is in that omission that the problems here originate.

There is no documentation in 1979 as to what transpired between the ministry and HUDAC, which is part of the fault the Ombudsman has found in this case. Perhaps if the promises and understandings had been documented, we would not have had the problems that subsequently developed.

Mr. Shymko: There is no documentation between what period to what period, and when does documentation begin between the two?

Ms. Bohnen: There is no documentation in August of 1979, when the minister, having met with HUDAC, began to make statements to the committee, to the Legislature, and corresponded with Mr. McClellan. So at the time the commitment from HUDAC, which Mr. Drea refers to, was obtained, we have found nothing in writing about that.

Mr. Shymko: Between the fall of 1979 until what time?

Ms. Bohnen: The earliest documentation we have about the essence of the commitment is not until October 1980.

Mr. Shymko: I am sorry to question it but this is very important. Do I understand, therefore, that the minister had made a commitment or made a promise without ever communicating with HUDAC, as is alleged in point 9 on page 2 of your summary?

Ms. Bohnen: He had met with HUDAC, there had been a meeting conducted and at the end of the meeting, which was set up to discuss budget and other matters, Mr. Drea raised this problem with HUDAC officials and asked for their assistance.

Mr. Shymko, if you will bear with me for just a minute, I have later documentation which I would like to share with you from the executive director and chairman of HUDAC giving their understanding of what happened at that meeting.

Mr. Shymko: That is fine.

Ms. Bohnen: This correspondence was generated in the fall of 1980 when the ministry expressed dissatisfaction with the offer made by the builder. HUDAC was doing the negotiations with the builder; an offer was obtained and forwarded to the ministry. Mr. Drea was not very happy with this offer so he asked HUDAC to go back and negotiate some more to try to get a better offer. HUDAC responded to Mr. Drea's and Mr. Simpson's request.

This is a letter which is quoted in the report but I do not believe you have it in full in your materials. It is dated October 29, 1980, and it is from Mr. C, the executive director/registrar of HUDAC, to Mr. Simpson:

"Dear Bob: I refer to your letter of October 6, 1980, dealing with the builder's proposal relating to the correction of defects in homes built by the builder between 1971-73.

"There is, I am sure, some misunderstanding as to the undertakings given by Mr. E," that is, the chairman of the board of HUDAC, "and myself. There can be no doubt that Mr. Drea asked that the program use its best efforts to sort out some problems being encountered by these builder home owners. I agreed to do what we could, believing that the complaints were recent vintage and had probably been given directly to Mr. Drea. As you know, it was only a short time later when it became obvious that the complaints Mr. Drea spoke of were seven to eight years old and numbered in excess of 140. It became clear to us at this stage that Mr. Drea was talking about one thing and we another."

Mr. Philip: Where are you quoting from?

Ms. Bohnen: You do not have the complete text of this letter, Mr. Philip.

Mr. Bell: We have the complete text of what you have just read. That is at page 46.

Ms. Bohnen: Could I carry on a little bit with this? It is important.

Mr. Shymko: With respect to that copy referred to on page 46, is that the letter that--

Mr. Bell: That is the letter Ms. Bohnen just read from. Page 16 of Dr. Hill's report.

Ms. Bohnen: This letter is such a crucial exposition of what HUDAC thought its commitment was that I think you should have it.

Mr. Shymko: Is this letter in full, the one on page 46, or is it only an excerpt?

Mr. Bell: It is obviously an excerpt.

Mr. Shymko: Mr. Chairman, may I ask that a copy of that letter be given to all the members of the committee.

Mr. Bell: Can you arrange that, Ms. Bohnen?

Ms. Bohnen: Yes. I am checking the text to see how much is not there. I think most of it is there. Can I just carry on with this and then if somebody could quickly make it anonymous, it can be distributed, sure.

Mr. Shymko: The reason I made the request is that I wondered if there is anything else in the letter that may be of importance to us to see which is not in the excerpt.

Ms. Bohnen: Sure, okay. He then goes on to say, "Despite this misunderstanding, we continue to do everything possible to facilitate the efforts of Mr. Drea to assist those home owners with legitimate problems." He then mentions the inspections, the many hours of meetings with the builders and his counsel.

"You indicate in your letter that the proposal by the builder appears to represent a shortfall in coverage, over the coverage that was understood at the time of the original discussion. I am sure that this correctly reflects your understanding. However, the program's understanding and commitment was that we would do everything we could to assist, and we have done that. The undertaking given by the builder may not be as extensive as some would like, but it nevertheless represents a substantial warranty."

Mr. Drea then wrote to the chairman of the board of HUDAC on November 4, 1980, to express his reaction to the offer which had been received from the builder. He asked the chairman to personally examine the ramifications of the current situation and to intercede to get the matters moving again. That prompted a reply from the chairman of the board of HUDAC, again expressing HUDAC's much more limited view of the nature of its commitment.

I am sorry I cannot give you a handy page reference in Dr. Hill's report for the text of this letter, but I will again share it with you, because it is very important.

"I have examined the program's role in this endeavour which we were pleased to undertake on your behalf. I must emphasize, however, that prior to becoming involved in a detailed examination of complaints, we were not aware of the magnitude of the complaint problem or the several years' interval between the construction of the homes and the discussions."

And then this is key: "It is our understanding at the meeting that these were relatively minor complaints and we stated only that we would be pleased to look into this matter for you."

Mr. Bell: That is quoted verbatim at page 18, page 48 of the material.

Ms. Bohnen: If the members would like the full text of all of these letters, I would be happy to hand them to the clerk.

Mr. Bell: Let us see where we go.

10:40 a.m.

Ms. Bohnen: All right. I have taken some time in the past few minutes to spell out for you as clearly as I could what the minister said, what the home owners understood he said and the quite different understanding of HUDAC. It is this misunderstanding between, on the one hand, the minister and the home owners, and, on the other hand, the minister and HUDAC, that led Dr. Hill to form his first conclusion in this case, which was that the ministry unreasonably omitted to document its commitment from HUDAC.

Mr. Bell: Ms. Bohnen, can I stop you there, because I want to make sure, and you should too, that the members of the committee fully grasp the players and the relationship. May I try this just as a small summary?

The owners, as a result of their concerns about the homes they bought, formed a group and after a lot of unsuccessful attempts in a number of areas, including the courts, approached Ross McClellan with a petition with 350 signatures. Mr. McClellan--and this is in 1978--raised that petition in the Legislature.

Ms. Bohnen: Yes.

Mr. Bell: That petition caused Mr. Drea, as Minister of Consumer and Commercial Relations, to be involved for the first time.

Ms. Bohnen: Yes.

Mr. Bell: He was involved when he was parliamentary assistant to the minister.

Ms. Bohnen: To the previous minister.

Mr. Bell: For our purposes, that is not relevant.

As a result of the matter being raised in the House and Mr. Drea's undertaking to the House to look into the matter--his timing was impeccable--probably at the next and first opportunity when he met with the principals of HUDAC when they were settling their budget, he raised the matter.

Ms. Bohnen: Yes.

Mr. Bell: We will never know what he asked for and what they said and promised, but as a result of that meeting, Mr. Drea, in a number of public forums, including the standing committee on administration of justice and perhaps the House on at least one occasion, made some comments that you and Dr. Hill have called clear and unconditional promises to take specified actions.

Ms. Bohnen: That is correct.

Mr. Bell: Those actions can be summarized as--and let us set aside the definition of defects for a moment because I consider that, frankly, a red herring to determine the crux issue. The action was that defects would be repaired at no cost to the home owner.

Ms. Bohnen: Yes.

Mr. Bell: All right.

Ms. Bohnen: Yes, and that they would have some input into which repairs ought to be made.

Mr. Bell: All right.

Mr. Shymko: That was made in the fall of 1979.

Mr. Bell: Again, my dates are not clear. You can fill them in. After Ross McClellan raised the matter by petition in the House, Mr. Drea--we will presume that first opportunity of a public forum was the standing committee on administration of justice--on October 10, 1979, and later on October 12, made the statements that Dr. Hill substantially relies upon in his conclusion that they were clear, unconditional promises. All right?

Mr. Bohnen: Yes, except to add that they were repeated and amplified slightly in November 1980, when we again addressed the issue.

Mr. Bell: Okay. We will talk about that, but the period leading up to October 12 is the critical period because that includes the meeting between Mr. Drea and HUDAC. All right?

Ms. Bohnen: Yes.

Mr. Bell: Again, to repeat, whatever was said at that meeting with HUDAC, the minister believed he could make these clear and unconditional statements.

Ms. Bohnen: Yes.

Mr. Bell: Is it your view and Dr. Hill's view that the minister believed HUDAC had assumed some obligation to do one of two things: to negotiate a result with the builder and/or to cover any shortfall repair costs?

Ms. Bohnen: I believe Mr. Drea understood the commitment to be that HUDAC would first try to negotiate this outcome with the builder, but if the builder refused to do anything or to do enough, HUDAC then would itself do the work and pay for the work.

Mr. Bell: That is the first phase of the chronology. The second phase is what you might call the implementation phase, where consultants or inspection reports were commissioned. There is a debate about whether the owners are to have some input, which I consider to be a red herring to the critical issue, leading to the realization in 1980 that there is no deal. Is that fairly stated?

Ms. Bohnen: Yes.

Mr. Bell: During the course of the investigation, were you able to determine whether HUDAC had actual knowledge of the minister's statements in October 1979 and subsequently?

Ms. Bohnen: I do not know that.

Mr. Bell: Let me put it this way. Is there any reason to believe that HUDAC would not have been aware of the minister's public statements both in committee and in the House?

Ms. Bohnen: They were certainly well recorded in the media which, of course, becomes an issue later on in the events.

Mr. Bell: We can save that question for Mr. Simpson and Mr. Lewis perhaps.

Ms. Bohnen: I cannot answer that.

Mr. Bell: Did your investigation uncover any communication from HUDAC to the minister or to anybody else, other than these letters that you have told us about, indicating the statements the minister made in committee and in the House were not an accurate representation of the agreement?

Ms. Bohnen: No, we have not uncovered anything.

Mr. Bell: Nothing other than the two letters you have referred us to, parts of which are found on pages 16 and 18 of Dr. Hill's report?

Ms. Bohnen: That is right.

Mr. Bell: These letters are clearly a year after Mr. Drea made his statements.

Ms. Bohnen: Yes. I believe Mr. Simpson was probably closest to the situation as far as the minister's side is concerned and was talking most frequently with HUDAC officials; so later on he may be able to answer those questions better than I can at this point.

Mr. Bell: Did your office in the investigation uncover any documentation or any information indicating that after the minister made his statements--I am referring specifically to the two in October 1979 and perhaps even the statement made in December 1978, but the statement you are relying upon--any member of his staff advised him that he had overstated or misstated the terms of the agreement he reported upon?

Ms. Bohnen: No, we found no indication of that.

Mr. Bell: All right. I just want to make sure I have covered everything. I am sorry. Ms. Bohnen, I think you should continue as you originally planned.

10:50 a.m.

Ms. Bohnen: All right. The stage has now been set for what the home owners expected would take place.

When 1980 starts to pass, inspectors come out from HUDAC and the home owners gradually become more and more restive. First of all, they have a problem with the activities of the HUDAC inspectors when they come to their homes. There is some irritation with the fact that they do not seem to be conducting very exhaustive investigations of these houses. They do not get right up there on the roofs. They come in business suits between 9 a.m. and 5 p.m., and they do not seem to be doing the thorough inspections which these home owners, who are still pretty upset about their homes, think they were promised. Also, they do not seem to be having the input they felt they were promised into what was wrong with the houses.

Probably more important, an initial deadline for completing

these inspection reports went by, the inspections were not completed and the home owners did not have copies of the report.

They continue to put pressure on their members, in particular Mr. McClellan and Mrs. Campbell, who in turn continue to raise questions and put some pressure on Mr. Drea.

As time goes by, acting not unreasonably, they began to get as much media publicity as possible into what was going on. The media were very interested in this. I think the whole subject of home building and defects in new homes was very much in the news back in those days.

Mr. Henderson: "They" being the home owners or the members you mentioned? You said "they" were getting the media in.

Ms. Bohnen: The home owners were doing what they could to get some publicity as time was going by. I think there is no doubt about that.

Mr. Bell: Are you going to deal with the ministry's position or are you going to wait?

Ms. Bohnen: Yes, I am.

Mr. Bell: Or do you want to deal with the question of the offer now?

Ms. Bohnen: I am going to deal with the offer now.

Negotiations, of course, were also continuing between HUDAC and the builder. What happens next leads to the Ombudsman's conclusion that the ministry unreasonably omitted to notify the home owners about the builder's offer.

When the reports of the inspections were completed they were sent to the builder so he could consider whatever offer he was prepared to make. On September 8, 1980, the builder's counsel sent the builder's offer to HUDAC. It was that the builder would not help resale home owners, just the original home owners who had problems with roofs and foundations, and they would share the cost of these repairs. No other repairs would be made and there would be no help to resale buyers.

If you want to follow this, it is on your page 45.

Shortly afterwards, in response to the natural questioning from HUDAC, the builder's counsel indicated the builder was prepared to absorb 80 per cent of the cost of the repairs. This is the only offer ever received from the builder. To our knowledge, the builder had never at any time during the course of these negotiations been prepared to pay 100 per cent or to pay for resale owners' repairs or to do anything to repair defects in addition to roofs and foundations.

I will not repeat the ministry's reaction to the offer except to remind you that Mr. Drea was not very satisfied with the offer. He expressed his displeasure to HUDAC, HUDAC ultimately

expressed it to the builder, and that led to the correspondence between the ministry and HUDAC as to what it was HUDAC thought it was committed to do.

Ministry officials met with the home owners' association on September 15, 1980, which was a week after the builder's offer was communicated, but they did not tell them about the offer. That has been explained by the ministry in the following terms: The ministry was sure the home owners would reject it, and since there were continuing efforts to get a better offer from the builder, if they told the home owners about it and fuelled the flames, the only possible result was to jeopardize the negotiations.

There is no doubt at that time, with the information they had, the home owners would not have accepted that offer. For us, it is fair to say, "Why would any reasonable person have accepted the offer?" As far as they had ever been told, what the builder was prepared to do was quite irrelevant. They had a commitment from the Minister of Consumer and Commercial Relations that, if necessary, HUDAC would repair all the homes, resale or original buyers, all the defects, at no cost to them and with their input as to what had to be done. So of course they would have rejected an 80 per cent limited offer from the builder with the information they had at the time.

Mr. Bell: It is not clear from the report or your synopsis. If that offer had been communicated, even though it had been turned down, from your perspective, does that let the minister and the ministry off the hook on all this?

Ms. Bohnen: No, I do not think so. It would have left them on perhaps a different hook. If the home owners had been told when this offer was received, "It is true Mr. Drea said such and such, but the rules of the game have changed; the most you are ever going to get is what the builder is prepared to do for you," had they been fully informed at that time, they would have had a different complaint about what had happened to them. They would have had perhaps a more accurate understanding of what the rules were.

Mr. Bell: Let us try it this way. If there had been full disclosure, if the position HUDAC took in October 1980 had been made known from the beginning and had been communicated either by HUDAC or by the minister to the complainants so they were aware that what was contemplated was an inspection to determine the defects before any decision is made on what repairs will or will not be effected--and that appears to have been the way the builder was proceeding--do you think they would have accepted that offer?

Ms. Bohnen: I expect they would have continued to rely on Mr. Drea's commitment.

Mr. Bell: No, I am removing the commitment.

Ms. Bohnen: I suppose we would have a different case entirely had Mr. Drea not made the commitment.

Mr. Bell: All right. That is not a fair question.

Mr. Poirier: I remember well, having read through all this and listening to you, the only channel of communication the builder had was either directly through HUDAC or through his lawyer to HUDAC, as for his offer, directly.

Ms. Bohnen: Yes.

Mr. Poirier: That would go only directly to the ministry, as for his offer, and then from the ministry to the home owners' association if it followed the normal channel of communications.

Ms. Bohnen: Yes, that is correct.

Mr. Poirier: It stopped at the ministry level.

Ms. Bohnen: That is correct.

Mr. Polsinelli: There was never any communication between the ministry and--

Mr. Poirier: No communication between the ministry and the home owners' association pertaining to that offer at any point.

Ms. Bohnen: That is correct.

Mr. Poirier: It stopped there.

Ms. Bohnen: Yes.

Mr. Poirier: It never went by any other channel, or through the media?

Ms. Bohnen: That is right.

Mr. Poirier: Not even through the media?

Ms. Bohnen: No.

Mr. Poirier: So there was absolutely no way the home owners' association could find out about that offer except through the ministry?

Ms. Bohnen: That is what happened.

Mr. Polsinelli: Was there any communication between the builder and the home owners?

Ms. Bohnen: Not by this stage, no. Much earlier, of course, there had been; years ago, but not now.

Mr. Shymko: You state in your summary that the home owners were never informed of the builder's offer as the ministry did not feel the home owners would accept the offer. Is there anything documented that substantiates that the ministry did not inform the home owners because it felt it would not be accepted? Or is this someone's opinion?

Mr. Bell: It is admitted.

Ms. Bohnen: It was admitted by the ministry.

Mr. Shymko: Is it admitted somewhere on record?

Ms. Bohnen: The deputy minister, writing to us on behalf of the ministry in the course of the processing of this investigation, has stated clearly that this was their reasoning.

Mr. Bell: That is not an issue. It is admitted by the ministry.

Mr. Shymko: Can the minister make a commitment on behalf of HUDAC without ever consulting with HUDAC and HUDAC not being aware, right up to at least November 1980, of the implications that these were substantial problems going back seven or eight years, while a commitment was made a year before that on behalf of an agency that is not even under the jurisdiction of the Ombudsman's office? It does not matter, I guess.

Mr. Henderson: That is what we have to evaluate.

Ms. Bohnen: I guess that is a way of stating the problem.

Mr. Shymko: The whole question here is who misled whom? Was the minister misleading the complainants or was HUDAC misleading the ministry? The indication I have from your comments is that apparently HUDAC did not mislead the ministry.

Ms. Bohnen: I do not believe the ministry wilfully misled the complainants. I do not think HUDAC wilfully misled the ministry. I think there was a misunderstanding.

11 a.m.

Mr. Bell: Can you put your finger on it? Who was the author of it?

Ms. Bohnen: The minister.

Mr. Bell: That is your conclusion, that HUDAC is not to bear any responsibility. Do not forget, it all happened at that meeting. We all know how it was raised. We all know why it was raised and when it was raised. We all know that people had their own beliefs and expectations going out of that meeting.

Ms. Bohnen: As you know, we have tried assiduously not to make any conclusions about HUDAC. It is not a governmental organization. You will not get me to put the blame on HUDAC today. We are only prepared to make conclusions and recommendations vis-à-vis the ministry.

Mr. Bell: With respect, you have not hesitated in other cases to make conclusions about HUDAC. Let us be blunt about this. This is a case where you are going to ask this committee to let the minister hang out to dry, so to speak. What we want to know is, should he be out there alone or should there be others on the same line with him?

I will give you my sense of it. If a minister of the crown after a meeting, and I assume he had people with him at that meeting from his ministry, left that meeting and then shortly thereafter went public quite categorically, and HUDAC was not aware of it and did not do anything to correct the position that had been taken, then I find it astounding that this could happen.

I have difficulty accepting that you are not able to make any findings as to HUDAC, even though those findings do not have to be totally relevant to your conclusions but, nevertheless, part of your investigation. It must lead you to some conclusions in that regard.

Mr. Henderson: I want to try an overview of this and see if I have it right. Am I right in feeling that the minister, and maybe this is the heart of the issue, was perhaps exceeding his authority--perhaps he was not; I do not know--and made some categorical assurances, because of which the home owners declined the builder's offer?

Ms. Bohnen: No, they did not decline the builder's offer. In fact, they never even knew about the offer.

Mr. Henderson: Yes, that is right. He was suspecting they would have, though. A judgement was made--

Let me start the sentence again because I am losing myself a little bit. I am putting this as a question. Is it so that the minister, perhaps exceeding his authority, offered certain assurances on the basis of which his ministry assumed the home owners would decline the builder's offer, and we are being asked to say whether his assurances should stick or whether the home owners or someone else is going to be left to carry the bags?

Ms. Bohnen: If we are being asked that, I would not admit, though, that he exceeded his authority.

Mr. Henderson: I guess that is one of the questions.

Ms. Bohnen: Yes, it is one of the questions.

To respond to some earlier comments, we are not going to disagree that HUDAC has culpability in this. We think HUDAC does, but our focus has to be on the ministry, especially since, vis-à-vis the Ombudsman, only the ministry can do anything to rectify the situation now. Perhaps you as a committee are freer to involve HUDAC--as you did in a case last year, or the year before or whenever it was--than we are ourselves. Our focus is on the ministry.

Mr. Henderson: Is it really up to HUDAC to correct something it thinks the minister is saying is wrong? Would they not say, "The minister said it, so it must be so"? I am asking that question at large; I am not asking it of any individual but it is a question of some concern.

Ms. Bohnen: No.

Mr. Baetz: The key to this is what transpired at that meeting between the minister and HUDAC at the time the estimates or the annual grant were considered. There was no follow-up letter in detail, I gather. Were there any official minutes at that meeting which specifically dealt with this subject?

Ms. Bohnen: No.

Mr. Baetz: There were none. It seems to me it is not a case of HUDAC having simply gone off in one direction and the minister off in the other. What might have happened, and I will ask you and/or the ministry to confirm this assumption, is that because there were no detailed minutes kept and no follow-up in writing, the minister went off with certain understandings and HUDAC went off with certain others. HUDAC said: "Yes, we will look into this. We will try to do something about this."

The minister assumed that is what would happen but HUDAC got a message from the minister at that meeting that it should really be doing something about this. In the excerpt of the letter you read to us here from the chairman of HUDAC on November 13, 1980, there is a second paragraph, which you did not read to us, which is very important because it indicates that HUDAC certainly got a message at that meeting that something should be done about this. I quote here from the chairman of HUDAC to the minister on November 13, 1980.

He said: "Despite the facts that subsequently became apparent to us, our people worked hundreds of hours, expended substantial sums of money and achieved to the builder a settlement which appears to be eminently reasonable. I suspect that to further pursue the builder with respect to second or third purchasers of units several years old would likely produce nothing and leave more than a suggestion of unfairness."

That paragraph tells me HUDAC got a clear message from the minister at that meeting, went out and with the builder tried to correct the situation. So in that meeting it was not just a case where the minister went to HUDAC and said, "You should correct this thing; you should do something," and HUDAC stonewalled and said, "No, we are not going to do anything." In fact, it was message given, message acted on. The minister subsequently made these public statements. I can understand why he would make them. It would be on the basis of that meeting and of all the things that happened afterwards that he said, "Yes, the thing will be corrected."

That is one observation I wanted to make. The other one is, and Mr. Shymko raised this question, it is maybe basic to the position here in the statement made by the Ombudsman which says, "In my opinion, when a minister makes a clear, unconditional promise to take specified action to help a group of people in a field within his ministerial responsibilities then he and his officials are bound to deliver on his promise."

11:10 a.m.

The question Mr. Shymko had was, did Mr. Drea, or the

Minister of Consumer and Commercial Relations, have the ministerial authority to say to HUDAC: "Look, something has gone wrong here with one of your members. I instruct you to correct it"? Does he or does he not have that authority? If he does not have it, then it weakens the Ombudsman's case here because the minister in this case made his public statements in good faith but he did not have, apparently--and I would like to have this confirmed--and probably knew he did not have, the authority to instruct HUDAC to make these corrections. What he did have at the time was what he thought was a commitment made in good faith by HUDAC.

I would appreciate hearing the official relationship between the minister and HUDAC. If he does not have that power, that authority, then, quite apart from the merits of the case, it raises a major question.

Ms. Bohnen: I would like to have a chance to speak to some of these points the members have raised, if I could first complete chronologically the scenario of events.

Mr. Bell: Yes. I think you can see, though, that members are anxious to get into what they believe to be some of the detail that is important.

Lest I forget, apropos Mr. Baetz's comments, on November 5, 1980, at the very time that HUDAC was again stating its position as a matter of written record to the standing committee on administration of justice, Mr. Drea said again quite categorically that as far as he was concerned he had a deal; if the builder was not going to do it, then in his words, "The industry would do it." He spoke in terms of "playing my cards" and calling in debts.

With respect, the legal relationship between HUDAC and the minister is not relevant. What is relevant is that they had discussions, expectations were formulated and the minister continued to act on those expectations.

Ms. Bohnen: I will carry on and address one of the points Mr. Baetz raised, because it comes next in time, in any event. The paragraph you read that I did not read from the letter also indicates that while the minister's commitment, as Mr. Bell says, continued to be public, categorical and unconditional, that if the builder did not do it, HUDAC would step in, everyone's house would be fixed, and so on, HUDAC, for its part, clearly viewed the builder's offer at 80 per cent of some of the defects in some of the homes as a fair and reasonable one. From HUDAC's point of view, that may or may not have been a reasonable assessment.

It is quite true that, legally speaking, the builder had no responsibility then. The home owners could care less about that because they knew Frank Drea had told the Legislature, the standing committee on administration of justice, Ross McClellan and themselves that HUDAC would step in if the builder would not. Everybody was going to get his house fixed.

You raise a very good question about whether Mr. Drea had

the power to force HUDAC to spend the money to have the houses fixed.

Mr. Shymko: That is not really the question. What I think Mr. Baetz tried to allude to and what I asked is this. We understand that HUDAC is not an agency under the jurisdiction of the Ombudsman, and that was the frustration of the Ombudsman's office. If I were to ask the Ombudsman today, if HUDAC was under his jurisdiction, about the offer and the work that had been done, the number of hours referred to by HUDAC, would he see them as reasonable under all the obligations, the regulations of HUDAC?

Dr. Hill: We still have the minister's commitment.

Mr. Shymko: I know it is unfair of me to ask that question. However, let us say HUDAC had been under the jurisdiction of the Ombudsman, would he have concluded that HUDAC acted reasonably in all its efforts, did it work at its maximum, according to the restraints of the regulations binding it? This is really what we are after. Has the minister made reasonable efforts in trying to resolve the problem, having in mind HUDAC's position and the confinement of its regulations or its program? Was the minister reasonable in saying: "We are not happy with that. We want more than 80 per cent. We want not just the first-time owners, but the resale owners as well, to be covered by that"?

Was the minister reasonable, as is indicated by the position that, despite HUDAC's belief of the offer, the minister requested to have the builder improve? Was that reasonable? Was he reasonable in pursuing it? Was he reasonable in concluding that the home owners would not be happy with the builder's offer and HUDAC's assessment of that offer in pursuing it even further?

Ms. Bohnen: You have raised several different issues there. As far as we are concerned, the issue is that when the minister makes a clear, unequivocal promise, etc., then, darn it, his officials have to see that those promises are made good. It is of no comfort and consolation to these home owners to say: "We are sorry, people. Technically speaking, the minister does not have the kind of authority over HUDAC to force them to do much more than they have done, and really 80 per cent is not so bad." That is all irrelevant. What matters is the minister has said something.

Dr. Hill: There are also the implications of what the minister said in terms of the outer society, if you want, or the community or the citizens. When a minister of the crown makes a categorical statement, and it is made over and over again, the citizens must believe that statement; they must act on that statement. There cannot be any fudging on that statement.

Ms. Bohnen: They must also expect that he knows the limits of his authority.

Mr. Bell: Just a minute, though. You are right, and nobody disagrees on that principle out of context for a moment of this case, but you have to look at the source. It is relevant to know what the minister relied upon. This committee has to decide whether and to what extent there is ministerial responsibility,

but I for one think it is relevant to know what the minister based his conclusions on in making that statement.

Let me ask you this way, sir. We assume hypothetically that you had jurisdiction over HUDAC. Would you have formed opinions and made recommendations in respect of HUDAC that would have, along with the ministry, required it to assume some responsibility for this?

Dr. Hill: Absolutely.

Mr. Bell: I consider that to be quite important in assessing the minister's position.

Dr. Hill: I agree it is important that we understand and know the background factors leading the minister to do what he did. But the enormity of what the minister said to the community and to society--the implications of that have to be considered--does not negate those background factors you mention, which we agree are equally--not equally; I should not say that--are indeed important.

Mr. Philip: I want to get into this business of who is responsible in addition to the minister and whether there is a clear line down through HUDAC.

On May 10, 1978, Mr. McClellan introduces his petition and the minister promises action. In October 1979 there is the same thing by the minister. In December 1979, however, we see what appears to be a backtracking by Mr. Simpson. I refer you to where Mr. A--Mr. A is Mr. Simpson--introduced the possibility that it was only substantial deficiencies that would be covered. This had not been indicated by Mr. Drea's comments.

After that, though, we have Mr. Drea stating on November 5, 1980, "We want that impasse broken or we are going to say the minister has a commitment from the HUDAC home warranty program that if this cannot be resolved, it will resolve it."

Then on December 12, 1980--I do not have the Hansard; maybe we can get that--Drea makes the promise that a full game plan will be revealed.

Would you not say that what happened was, after the backtracking by Simpson, who was the contact person with HUDAC, that position was repudiated by the minister in his subsequent statements and that should have been communicated from Simpson, as a position that was repudiated, back to the HUDAC new home warranty program?

Ms. Bohnen: Yes, I think that ought to have been done.

11:20 a.m.

Mr. Philip: Therefore, it is not just the minister, it is also a clear chain of command from the minister through Simpson to HUDAC. There is ministerial responsibility in the sense of civil service responsibility; not just by the minister but also by the top civil servants in this regard.

Ms. Bohnen: Yes, since they were charged with implementing what the minister had stated would be done.

Mr. Philip: Did you have any indication that this was communicated through Mr. Simpson or through the minister directly to HUDAC, other than through whatever happens--

Ms. Bohnen: I do not have that indication. Perhaps when he presents the ministry's position, he can address that.

Mr. Philip: What is interesting is that when Mr. Simpson appears with the minister to deal with matters like that before a committee of the Legislature under the appropriate vote, the HUDAC officials are present. I know Mr. Simpson will want to answer this. You do not discuss the HUDAC home warranty program without the HUDAC officials sitting side by side with Mr. Simpson answering questions and addressing this committee. I am wondering how they could not possibly be aware of what was happening.

Mr. Bell: That is an extremely critical point. I do not know whether that is a categorical arrangement. Mr. Simpson, when it is your turn, can you confirm whether HUDAC was present at the justice committee meetings for these dates where Mr. Drea is quoted in 1979 and 1980? That solves the question of whether or not they knew of the position the minister had taken.

Mr. Poirier: Before we address the two main questions regarding the responsibilities, would it not be a normal process to let the Ombudsman finish and let the ministry finish? We seem to be jumping the gun here. We want to address the two questions but I would like the Ombudsman to finish and the ministry to finish and then we can start addressing the two questions.

Dr. Hill: Thank you.

Ms. Bohnen: Okay. Where are we now? I was explaining what happened with the builder's offer. It was not communicated to the home owners for the reason we have been given by the ministry.

We would grant that, as long as there was some reasonable prospect of negotiations being fruitful and getting a better offer, it might have been a wise tactic not to share the offer with the home owners. But as time went by, it became clear very quickly that there was not going to be any better offer from the builder. This is not surprising considering HUDAC thinks the 80 per cent offer is a darn good one.

Nevertheless, on March 5, 1981, the general manager of HUDAC wrote to the counsel for the builder stating the ministry's view that the offer was inadequate. This prompts a reply from the counsel on March 10, quoted on page 50 of your report, in which the counsel says, among other things: "May I say we have not had any refusal communicated to us indicating the home owners have refused our offer. If the home owners do not accept our offer by March 25, 1981, I would have to advise my clients at that time the offer should be withdrawn."

The builder's counsel thinks the offer has been communicated

to the home owners. We think, reacting both to this letter expressing the ministry's disapproval and media publicity, the builder is getting to the point where he says, "You have until March 25, to accept it, and then that is it; the offer is not open any more."

As we know, March 25 went by and the offer was never communicated to the home owners. It remains our conclusion that they ought to have been fully informed of the progress of the negotiations with the builder, at least in terms of HUDAC, why the builder's position mattered and given a chance to accept the offer or reject it.

Not a lot more happens in terms of events except that some relevant material concerns the sequelae and the casting of blame for why everything came to grief.

The home owners, of course, continued to put on pressure. They were very unhappy and their various members continued to put on pressure. But now Mr. Drea, the new minister--he was then replaced by Gordon Walker--other members of the Legislature and, indeed, ministry officials start blaming the home owners for spoiling this great deal that has been struck with the builder. They say it was because the home owners resorted to media publicity--they staged events like picketing Mr. Davis's house and Mr. Drea's house, and there were some public meetings and so on--that the deal fell apart.

The Ombudsman's report recounts in detail the nature of the media coverage. Some of it named the builder and some of it did not. Most of it recounted the ministry's efforts, Mr. Drea's commitments and what was happening. But our investigation has persuaded us that the media publicity did not prevent the ministry or HUDAC from getting a better offer from the builder.

Mr. Philip: Did the media publicity not take place before December 1980?

Ms. Bohnen: It continued throughout this period. During 1981 there continued to be publicity.

Mr. Philip: If it did not affect it by then and there was a promise by then, why would it suddenly affect it after? Before the election everything is going to be okay. After the election it is the home owners' fault that they have blown the whole thing.

Ms. Bohnen: We agree with that. There is no doubt at all that by the time Mr. Drea stepped in, relationships between the builder and the home owners had soured completely. They had taken the builder to court. They had moved heaven and earth. They were not on speaking terms. The builder had never expressed any willingness at any stage of the game to do better than 80 per cent.

Mr. Shymko: May I just have a supplementary? We keep referring to the media and to the fact that the home owners were not aware of that offer. Was there anything in the media right up to March 25, 1981, that referred in any way to an offer by the builder?

Ms. Bohnen: Can you just give me one minute to make sure?

Mr. Bell: The answer is no.

Ms. Bohnen: There was nothing about a firm offer. There had been earlier news reports about negotiations and things like that, but there was nothing about this offer.

Mr. Shymko: In other words, even reporters handling that case and reporting it in the media were not aware of any offer.

Ms. Bohnen: That is correct.

Mr. Shymko: That any offer was made.

Ms. Bohnen: That is correct.

Mr. Poirier: This refers back to my original question to you. The only way the home owners could find out about that deal was through HUDAC, through the ministry?

Ms. Bohnen: Yes.

Mr. Poirier: No other way, not even the media?

Ms. Bohnen: That is right.

Mr. Poirier: Fair enough. Thank you.

Mr. Bell: Ms. Bohnen, can we cut through and finish the question of the publicity? As I understand the fundamentals of Dr. Hill's position, it is irrelevant because Dr. Hill relies upon the so-called categorical, unconditional statements made in 1979 as the basis of his opinions and conclusions. If that is the case, then the home owners' actions leading to publicity in 1981 are a little irrelevant to that consideration. They are relevant only if you are relying only upon the offer as the basis of the recommendation.

Dr. Hill: They are relevant because it is a point of contention that has to be clarified.

Mr. Bell: But I just want to understand your position that whether or not the home owners caused or contributed to the withdrawal of the offer is not relevant to your fundamental opinion and recommendations that they had a commitment in 1979.

Dr. Hill: No, not at all.

Ms. Bohnen: That is correct. As I tried to explain earlier, the home owners had been given no information on which to change their conduct. They had never been told, "Your success depends on the goodwill of the builder, so cool it," in any event.

I think the most important fact, if the issue is relevant at all, is that it had no impact on the builder's willingness to come across, because he never had been any more willing than he was to pay 80 per cent.

Mr. Bell: That is your position.

Ms. Bohnen: Yes.

Mr. Bell: That is an issue.

11:30 a.m.

Dr. Hill: The original position remains the same, as far as I am concerned, namely, that a group of citizens of this province was given a categorical assurance by a minister. That is the position.

Ms. Bohnen: Finally, the Ombudsman concluded that the ministry unreasonably omitted to provide the home owners with the results of the HUDAC inspections as well as with written notice of what finally happened in the matter. This is housekeeping except that several pages of the Ombudsman's report are taken up with the history of their efforts, in particular through Mrs. Campbell, to get an inspection report. They were promised inspection reports on numerous occasions. The reports were sent to the builder. They are in the ministry's files. I have seen and read them and have copies of them. There seems no good reason why these reports promised so long ago could not be made available to the complainants.

With your permission, I intend to address the Ombudsman's recommendations and then speak briefly to the ministry's position.

Mr. Bell: It would be helpful if you could turn to page 5 of the synopsis. Three recommendations are set forth and there are practical issues you have to address. Assuming the recommendations are supported by you, how from a practical standpoint can these things be implemented?

Ms. Bohnen: The first recommendation is that the ministry reopen its file, review the HUDAC and related inspection reports for houses still owned by people who filed deficiency lists and who are still interested in assistance from the ministry. The formal recommendation stated that it would be the association's responsibility to advise the ministry of the names of the home owners.

Mr. Bell: Let me stop you there for a minute. The potential persons who may qualify for relief under the recommendation are people who originally filed a deficiency list and people who are still interested regardless of whether they originally filed a deficiency list?

Ms. Bohnen: No. They had to have originally filed a deficiency list.

Mr. Bell: The maximum number would be all those who filed deficiency lists.

Ms. Bohen: There were 144 who filed deficiency lists.

Mr. Bell: There were 144, and, of those, the association would have to determine whether certain people are still interested. Do we have to get involved in whether they were original or subsequent owners?

Ms. Bohnen: Some are original and some are subsequent.

Mr. Bell: Can we presume those who have in the interim sold their houses are probably not interested in assistance?

Ms. Bohnen: We can assume that.

Dr. Hill: They are out of it.

Ms. Bohnen: Yes, they are out.

Mr. Bell: So we cannot ball-park--

Ms. Bohnen: I can tell you exactly. I can tell you the home owners' association has sent a list of home owners to the ministry which, in the association's view, are eligible for assistance, having filed deficiency lists in 1980. That is 26.

Dr. Hill: The ball-park figure is 26.

Mr. Bell: This distils to 26 individuals.

Ms. Bohnen: Yes, 26 properties.

Mr. Henderson: If one of the owners who had filed a deficiency list had to move, sell his house and take a beating, he would not be eligible for any form of assistance, which may or may not be right. We should not assume he is not interested in it.

Mr. Philip: Maybe Mr. Simpson can help us with this. Is there not under the Real Estate and Business Brokers Act the requirement of disclosure of any major defects? Therefore, the real estate agent selling a house would have to disclose. There was publicity in the newspapers. Some of these people may well have sold at considerable loss and the new owners would have bought with the understanding there were defects in the homes.

Ms. Bohnen: These are problems we considered. It would be difficult to quantify a financial loss on houses that were sold in the interim as a result of these defects. The market was rising. I will not swear to it, but our investigation indicates that these homes appreciated in value and profits were made on the homes. We felt it would be impossible to determine how much more profit any home owner selling would have made had his home been repaired way back when.

Mr. Bell: I might deal with it this way. Your client, so-called, indicated to you recently that there are 26 persons eligible on the list, and that is a number you would accept as an implementation of your recommendation, assuming hypothetically that the matter is supported.

Dr. Hill: Yes.

Mr. Bell: That is the number the committee can work with for the purpose of its deliberations.

That finishes A. Is there nothing more we should say about A?

Ms. Bohnen: I do not think so.

Interjection.

Ms. Bohnen: I have been reminded that it is possible that someone else who still lives there and who had filed a deficiency list to the home owners' association and for whatever reason was unaware will come forward, but I think 26 is a pretty accurate figure to go on.

Flowing out of this, the Ombudsman recommended that the ministry, at no cost to the home owners, repair those homes which had suffered damage as a result of a major structural defect relating to original construction or in which there exists substantial defects relating to original construction as reflected in the HUDAC inspection reports.

Mr. Philip: By substantial defects do you mean those things that would be covered under the one-year period, or is it two years? They have to be reported within one or two years.

Ms. Bohnen: One.

Mr. Philip: One year. That could be anything as small as a defect in a rain trough, for example. That would be a substantial defect as long as it was reported under the one-year cutoff.

Ms. Bohnen: No. That is not what we had in mind. This raises an important issue. You recall from what I said earlier that when Mr. Drea he was making his public statements, he did not distinguish between different kinds of defects. He just talked about the defects being repaired. Under the HUDAC program an important distinction is drawn between different types of defects. There are what are usually called cosmetic defects, minor defects, which are covered by the one-year HUDAC warranty. Then there are structural defects which are covered by the five-year HUDAC warranty.

The home owners would argue very strenuously that because of Mr. Drea's commitment they should get every last defect repaired. The problem with that is we are now many years, 14 years in some cases, post construction. The Ombudsman felt it would be virtually impossible to tell which of these cosmetic defects resulted from original construction and which did not. So the fairest thing to recommend, notwithstanding Mr. Drea's much broader commitment, was to repair the major structural and other substantial defects relating to original construction.

Mr. Philip: Under the five-year plan, it is only structural defects that are covered. Then you say cosmetic defects are not. I am confused. You are not covering anything under the

one-year program. The only other things covered under HUDAC are under the five-year program, which are the major structural defects. If you are not covering the one-year and you are covering the five-year ones, what is a substantial defect? There is nothing under the home warranty program categories that defines a structural defect. There are only two types of defects, the one-year coverage and the five-year coverage. The five-year coverage is entirely for structural defects.

I can see us getting into one hell of a wrangle as to what a substantial defect is and somebody filing another complaint.

11:40 a.m.

Mr. Bell: It is not over at that stage. Ms. Bohnen can confirm that the review you contemplate that the ministry undertake is of those inspection reports that have already been made and that the major structural and substantial defects, both relating to original construction, must be identified from those reports.

Ms. Bohnen: Yes, that is correct.

Mr. Bell: You do not contemplate that there is to be, for each of the homes eligible, another inspection by some independent agency for the purpose of determining.

Ms. Bohnen: May I just address this coherently? After the Ombudsman issued his report, there was discussion between ministry representatives and ourselves about what kind of defects we were talking about.

You are quite right, Mr. Philip. The original recommendation used the term "major structural defect," which has a technical meaning under HUDAC, and that was kindly pointed out to us by ministry officials. We thought about that and came to some agreement that what all the players were really talking about and what we meant was major defects as opposed to what might be called minor defects or annoyances.

That led on October 15, 1984, to a letter to Mr. Crosbie, the deputy minister, from Mrs. Meslin, who was acting Ombudsman at the time, explaining what kinds of defects we were talking about. She stated:

"It is the Ombudsman's intention that those home owners who were considered to be suffering serious and substantial defects in their homes as reflected in the HUDAC inspection reports should be eligible for assistance, whether or not these defects come within the strict legal meaning of 'major structural defect' as defined under the Ontario New Home Warranties Plan Act."

Mr. Bell: That just muddies the water. Now we have another word, "serious," in there. You have to help us get a definition of what defects, other than the--

I do not have any trouble with "major structural as a result of original construction," because the engineers understand what that means. But in the case of "other substantial defects caused by original construction," you are going to have to help us.

Ms. Bohnen: If I may suggest, I went through the inspection reports again to prepare for these hearings, and they are pretty detailed about the inspectors' observations of what was wrong with the house and his understanding of the cause.

The original understanding of the home owners was that inspections would be completed; HUDAC would specify what, in its view, ought to be done to rectify these houses; the home owner would have some input and in case of disagreement the ministry would make a decision. I am going to suggest that, in cases where it is not immediately apparent from the inspection report, in cases where the home owner and an official--be that, I propose, in HUDAC--cannot agree about what work ought to be done, it should revert to the original agreement, which was that the ministry would make a decision.

Mr. Philip: We know what a structural defect is and we know what is covered under the one year. We know some of the things that are covered under the one year you want included under "substantial defect."

Surely it would make some sense to set a dollar figure. Putting a rivet in a rain trough is not a substantial defect; it is something the guy has probably done by now. But repairing a ceiling that has fallen in, which is not a structural defect but will cost \$500 or \$600, because they have to do restrapping and Lord knows what, is a substantial defect.

Maybe if you put in a dollar figure--anything that costs more than \$200 on an individual repair or whatever--it would make much more sense. Then you are not going to wrangle over what is a substantial defect.

Ms. Bohnen: That is very generous. The only difficulty I would think the minister would raise is that even in 1985 it is sometimes difficult to read reports conducted back in 1980 and tell whether those minor defects, the cosmetic ones, relate to original construction or not.

Mr. Poirier: At the top of page 62, the very page we are looking at now, you mention there were 26 people, but you also say that there could be some more.

"Although Mr. D's letter probably gives a good indication of the extent of the coverage that the ministry might have to consider, it is the position of the Ombudsman that if other home owners not on that list of 26 come forward and request assistance and are otherwise qualified, these other home owners should also be eligible for compensation. It would certainly be reasonable for the ministry to put a time limit on the period in which any new names are provided to the ministry."

Has any work been done on that, or do you know of any more who might come forward on top of the 26?

Ms. Bohnen: No. Right now, as far as we know, there are just these 26.

Mr. Poirier: As for the discrepancy in defining what are major structural defects, we all know HUDAC has a definition and the home owners have a definition. They even included a definition in the Canadian Dictionary of English, if I remember rightly. You seem to be suggesting the ministry should be the arbiter on the definition.

Ms. Bohnen: No, I am not--

Mr. Philip: They do not have a definition.

Mr. Poirier: Who does not?

Mr. Philip: They only defined structural defect; they do not have substantial defect defined at all.

Mr. Poirier: Exactly. I am talking about the word "deficiency"--defects if you want. We can spend an entire day debating whose standards should be used to define major structural defect or whatever. We cannot seem to agree since we do not have enough information for a precise definition as to what is included and what is not included. Thus I am saying that at some point there will have to be a referee. Then he or she will have to decide exactly whether it is on or off the list.

Mr. Bell: Dr. Hill, are you content in this hypothetical situation to let the ministry be the arbiter of the defects covered?

Ms. Bohnen: The ministry was originally suggested as the arbiter when it was its understanding that HUDAC would be making the offer. The ministry thus was standing off to the side.

Mr. Bell: Say simply yes or no. You are asking the minister to foot the bill and you are asking the payer to be the judge.

Ms. Bohnen: No.

Dr. Hill: It is a complex situation. It is a little difficult to ask the minister to do both things. I would like to think about that. Hold on a second. Can we appoint an arbiter or referee from outside to do that?

Mr. Bell: There are precedents, you know. It has been left to other governmental organizations to assess the amount of money they would pay workers. That is done at the Workers' Compensation Board all the time.

Ms. Bohnen: We did that in Pickering.

Mr. Bell: You let that body assess, and you let the Minister of Housing do so. There are a lot of parallels. I think,

with respect, we might ask you to presume upon the integrity of the ministry.

Dr. Hill: I am not going to say no categorically. Let me have a word with my counsel for a second.

Mr. Pierce: The material I have been able to read in the last day indicates to me that the inspectors were to go into the homes, inspect the property, consult with the owners and come up with a list of deficiencies. These would then be submitted.

This material indicates that consultation did not take place. The inspections were carried out and the inspection material then went back to HUDAC, which reviewed it and agreed there were deficiencies that should be corrected. Then after talking to the contractor, HUDAC came to the conclusion it would be prepared to pay for 80 per cent of the deficiency repairs.

Ms. Bohnen: The builder was sent these inspection reports and read them and then on his own came up with this 80 per cent offer. Although the inspection reports record some of the inspector's comments as to the cause of this or that problem, sometimes the inspector says, "This is minor" or "This is major." There is no formal HUDAC assessment on the inspection report of what is substantial and what is minor.

Mr. Pierce: At any time since the action was started, have the present owners of the houses ever seen the reports that were submitted on the deficiencies?

Ms. Bohnen: No. They saw their own list of what was wrong, but they never saw the inspector's report.

Mr. Pierce: So they do not have any input into the different definitions as to whether they are substantial defects, structural defects or just deficiencies in construction?

Ms. Bohnen: Not in a specific way. They have made representations to the Ombudsman about what defects ought to be covered in a general sense, but that is all.

11:50 a.m.

Mr. Pierce: As I understand the recommendations then, the report would then go back to the home owner. He would have to agree that the repairs listed there were necessary to put his home back in the condition it should have been in when he bought it. If he did not agree with that, an arbitrator would be brought in to arbitrarily decide whether the repairs were all the repairs that were necessary.

Dr. Hill: I will address that point now. After a quick, brief consultation with my team and after listening to the precedents Mr. Bell cited, we are fully prepared, if it is the will of all, to see the ministry take that position and make that final determination.

Mr. Bell: You have not hesitated in the past where you have not agreed with the assessment to tell us.

Dr. Hill: No.

The Vice-Chairman: Ms. Bohnen, if you will finish your report, we have two questioners, Dr. Henderson and Mr. Baetz. Will you please address the chair when you have to ask a question? It is much easier for Hansard.

Ms. Bohnen: The final recommendation of the Ombudsman that concerns compensation or rectification of defects is the last one and it relates to reimbursing any home owners who made the necessary repairs themselves and who can prove their payment. I hope that is more straightforward than the previous recommendation. If it is, I will pass on to the next recommendation.

Mr. Polsinelli: I am concerned that it may be a bit unreasonable 14 years after the event to require a home owner to have substantiation or proof of payment for having the repair effected. I am sure a lot of these people have by now given up hope that they will ever be compensated for their defects.

I would suggest that instead of requiring proof of payment, since their deficiencies are documented and HUDAC has the deficiency notices, in the event a home owner cannot substantiate having paid an individual through receipt or anything, it should be estimated what the repair would have cost at that time.

I know that 12 to 14 years after the fact, I would not still have a receipt for having repaired a leaky roof or whatever.

Dr. Hill: I accept that.

Mr. Bell: It is not that difficult because again, the persons contemplated under C have already been identified in these inspection reports. All you have to do is determine, of the people who are on the list in the inspection reports, and we are now talking about 26 persons, whether they have had repairs effected, and compare what they say they have had by way of repairs against the reports.

If the ministry is going to serve as the arbiter, it should not have a lot of difficulty determining the proportion of moneys already paid which should be reimbursed.

Mr. Polsinelli: That is exactly my point, and that could be effected if we just strike from recommendation 1(c), "upon proof of payment," the last four words, in which case we are suggesting that the home owners who have effected the repairs be compensated for the repair costs. That would be done through either receipt for the work effected or a determination by the ministry or HUDAC as to the cost of the repair at that time.

Dr. Hill: Considering the amount of time that has passed, I consider that a reasonable modification.

Mr. Baetz: About 45 minutes ago the member for Prescott-Russell (Mr. Poirier) made a good suggestion that we do not interject any further until we have heard from the ministry as well as from the Ombudsman. I am one of the guilty parties since I have been interjecting, but I just wonder if we should go back to

that format. I am desperately anxious to ask the ministry a lot of questions but obviously it has not had a chance to put its case forward.

Mr. Bell: If we cut you off now, when you have a chance to respond to what Mr. Simpson and Mr. Lewis have said you can deal with it then.

Ms. Bohnen: I was going to remind you that there was a second recommendation which addresses how we are going to implement the repairs, which is to send reporting letters indicating the corrective work intended. That is all I need to say about that.

I gather your wishes are that I not make any comment in response to the ministry's position until after it sets out for itself what its position is. I will be happy to do that.

The Vice-Chairman: Okay. We will call on Mr. Simpson and carry on until 12:30. Would you like to make some comments, Mr. Bell?

Mr. Bell: Mr. Simpson, using any material that the committee has before it that you care to, can you state what the ministry's position is on the matter and specifically why the ministry does not intend to implement the Ombudsman's recommendations?

Mr. Simpson: I will not be lengthy on this. I prefer to deal with questions. The synopsis that was prepared--it is in the book; I believe it is the first item--was discussed with us by the Ombudsman's staff, and we were invited to make comments and suggestions in respect of the synopsis and to ask for things to be included that deal with our position.

I was at the meeting with the chairman of the board and the president of the new home warranty program in February 1979, which dealt with the budget exactly and their premiums, the charges they would levy on home owners.

When the meeting concluded, the matter of the homes in this area of North York was discussed. The discussion lasted probably three or four minutes and it was in two parts. I cannot testify or give you exactly word for word because the minister was talking to the chairman of the board and I was talking to the president of the corporation, as sometimes happens in a meeting such as that. We were talking about different things and then we came back together. As we realized the nature of the discussion, we swung back into a group of four.

I can summarize the discussion as basically saying: "There is still a problem out there. Let us have a go at it." I realize that does not sound like a contract and it does not pin right down: "Yes, you will; if they do not, you will; if they do not, we will." However, it was quite unambiguous: "Let us have a go at this situation. It is a sore that is out there. It exists, it has been controversial so let us have a go at it and see what we can do." That is about as good a reflection as I can give of a conversation that took place more than six years ago.

As time went on, that is indeed what happened. A meeting was held with the home owners' association and, as Ms. Bohnen has said, they reported to their members their understanding of things and a process was set in place involving the warranty corporation dealing with the builder and our dealing with the association.

12 noon

Our designated prime contact with the association, because it had a structure--the association had a president, vice-president, secretary and what have you--I believe was the vice-president, who is not indicated as an A, B, C, D or E in this scenario. He was someone with whom I had conversations and with whom Mr. Lewis had conversations. Mr. Lewis is here, not as a solicitor and not to advise, but as a participant in that process who can speak to that.

The program was set under way comprising the agreed-upon inspection activity. The lists were supplied by the home owners. I think another thing is worth mentioning because a time context is always mentioned in this case. There were three lists. List A, of 59 houses, was submitted early on--I believe in January 1980. Another list of 83 houses, which we called list B, came in a month or so later. There was a C list, which was submitted in June 1980; there are no inspection reports for this list at this stage.

The process was set in place whereby the home warranty program would assign two-person teams of inspectors to go to every house where a request had been submitted for an inspection. They did this. They went to every house and wrote it all up. They wrote up everything in the house--water stains, whatever was cited as a situation.

This seems to be an important aspect to the Ombudsman's case. Mr. Drea was unequivocal; Hansard speaks for itself. I was unequivocal too in April 1980, when our estimates were before the standing committee on administration of justice. I said: "It is looking good. We have something going here; there is a process under way." I think I did acknowledge that it had not been going as quickly as we all would have liked. But we take the position to this day that through the designated contact with us we were in full communication. We did indicate how it was being done and why it was being done that way. I am sure Mr. Lewis will speak to that.

The vice-president of the home owners' association was told on more than one occasion by myself and Mr. Lewis: "Let us get all the inspection reports in. We want to see them all before we make any final determination of what should be done. Things will arise in those inspection reports that may call for further technical work. We want to see all 160 or 170--whatever it is. If we see a similar thing mentioned in 40 of them, we may want to hire some outside resources to go look at those 40." We said there was no point in dealing with it piecemeal.

There would be a second problem in dealing with it piecemeal, and we mentioned it to them more than once. We told them, "Your people are going to hear different things at different times, and this will set up a whole chain reaction: 'Why did he

get this? Why did they say that to him? Why did they not say that to me?' and so forth." We told them we could not do it that way because it did not make any sense. It should all be aggregated, pulled together, and analysed at once. Then all the communication should take place at once so that everybody knew simultaneously what was going to happen and why.

There was a darned good reason for the process, and it was carefully explained to the home owners' association. Mr. Drea was unequivocal and we were unequivocal; we felt we had a solid situation, something that was going to mature. The program cost, as they said, hundreds if not thousands of hours of inspectors' time as well as some thousands of dollars to hire a special engineering firm to look at some aspects of these houses. But I am arguing that this is a clear expression both of good faith and intent on the part of everybody to deliver a result.

Much has also been made of the fact that there were no conditions. It has almost been suggested it did not matter what the home owners did, or anybody did, by way of complaining, publicity or anything else because everything was unequivocal and it did not matter. Our position would only be that Mr. Lewis and I tried to indicate very early in the game that it did matter, that this was important, that we were working with the builder, we were achieving a result and it was looking very good, but they just could not rekindle this thing on the basis of not caring what kind of controversy you stir up, or what kind of publicity you seek, because it does not matter.

We would argue that we did make clear that it did matter, that we did say: "Holy smokes, what are you doing? Why are you doing this? Why are you seeking this publicity?" We would argue that we did indicate this was not without qualification, that we were negotiating, we were working with the builder, we were working through the warranty program with the builder. We feel quite strongly that to say they did not know, that it did not matter, that they had an unequivocal promise and no one had told them otherwise that they could do these things and that it should not jeopardize anything, is extreme. It is not reflective of the total situation.

One of the problems is that there were countless phone calls during that time. The person with whom we had contact in the association was a fellow civil servant who arrived early in the morning, and because I arrived early in the morning he got me early in the morning. He got Mr. Lewis later in the day. In some cases, these phone calls were short, in some cases lengthy, but we endeavoured to communicate. We always endeavoured to communicate fully.

Our bottom-line position is that we did tell them there were conditions. We did tell them they related to the builder. We told them we had a good thing going and not to jeopardize it. We do feel quite strongly that had a part in it. It was going well and then it went wrong.

We had the Teela listings too, which are the real estate sales listings. We knew what the sales figures had been and we

knew what the turnover was. There were 52 original owners. We went with the list of 144 or 174, depending on whether we included the C list. There were only 52 original owners that would have been affected by the 80/20 arrangement.

I beg to differ, and I think it is in the material somewhere, but we did, at a meeting with the home owners' association, and it may have been the September one, indicate that we had an offer but we did not indicate the details. We just said we had something but it was not up to what we thought we were getting and we were going to have another look at it.

Mr. Lewis: I believe that was in September.

Mr. Simpson: It was September. So we did indicate that we had something but it was not something we were happy with and we knew they would not be happy with it so we were going to try to do something about it. That is as far as it went. We did not say what it was.

Mr. Shymko: Did you mention the 80 per cent?

Mr. Simpson: No, we just said we had something but it was not what we had talked about and, therefore, we were going to have another go with them.

12:10 p.m.

I cannot add much more, but I do think the case, as presented on paper, is very clinical; it is very specific. You said you would do this and that. I do not think it reflects, and maybe it is just a discussion here, the amount of time and effort everybody put into it in good faith to achieve a result. We were pretty complete in our communications as to what was going on, as to why it was being done in a certain way and what we were hoping to achieve, and we are pretty adamant about that.

Mr. Lewis had a lot of discussions with the vice-president of the home owners' association and perhaps he could add to that.

Mr. Lewis: Before touching on that, there is a slight correction to the synopsis of the detailed summary which I hope has been made to the copies the committee has. Just in case it has not, it is item 8 on page 2, and it is quite important. The last sentence in item 8 says, "The ministry indicates that it warned the home owners that they would be 'taking a calculated risk' by generating publicity." Do your copies read that way?

Interjection: Yes.

Mr. Lewis: Unfortunately, that has been reversed. The fact is, and it should so appear, that the ministry was told that the home owners had met and had decided to take a calculated risk by generating publicity. I would ask that you please correct that. It is rather germane to our point of view.

Mr. Bell: We all have the same record. Can we agree that we will delete, "The ministry indicates that it warned," and then

start the sentence by saying, "The home owners stated that they would be 'taking a calculated risk' by generating publicity"?

Mr. Lewis: I am sorry. "The home owners stated that they had discussed the matter and were prepared to take a calculated risk."

Mr. Philip: Discussed it with whom?

Mr. Lewis: As an executive, I take it, they had discussed it amongst themselves. The home owners' association had discussed it.

Mr. Philip: Where would they get the information that they were taking a calculated risk? Did you people tell them that?

Mr. Lewis: Yes. If you do not mind, I will be dealing that in a minute. But yes, we did.

Mr. Philip: So it is really academic. You warned the home owners that they were taking a calculated risk, and they said they recognized that because they got that information from you.

The Vice-Chairman: Mr. Philip, we will let Mr. Lewis finish here and you can ask some questions later.

Mr. Lewis: That may perhaps be an overstatement and an oversimplification, in hindsight.

Mr. Philip: I am not prepared to change this until we have that cleared up, because I think we are playing word games..

Mr. Shymko: My understanding is that it is a question of semantics here or something, but you had clearly pointed out to the home owners' association the consequences of publicity, or you might have discussed it with them at some stage. Then they, as the executive of the association, looked at various options and at the effects and consequences of publicity that might be damaging or helpful to their case and decided to take the calculated risk of seeking publicity. Is that my understanding?

Mr. Lewis: That is correct.

Mr. Shymko: You did discuss with them at some stage what publicity might do either to harm them or to help them, possibly indicating that there might be harm in going public. Did you discuss this with them at any stage prior to the executive's decision to take a calculated risk?

Mr. Lewis: Yes, we did, and we did this largely informally. If I might, Mr. Chairman--

Mr. Philip: So the statement stands, then, that they were warned by you.

Mr. Lewis: With respect, Mr. Philip, that puts a coloration on it that is not quite the way it happened. In discussing it, the ministry said, and I think we said it to the

Ombudsman at times, that this was a situation where you had to be there. There was a mood, which the Ombudsman has referred to, that was created by the fact that these home owners--or their leadership, in any event--had been concerned for many years before they ever got to us. They were a frustrated group who had attempted court action and who had failed in court action, or failed in the sense that the only action that ever went to any form of trial was settled for a far lesser figure than was claimed.

By the time they had exhausted dealings with North York and others who had responsibility, let us say, for the building code, by the time they got to us they were already a frustrated group.

Mr. Philip: But also a very public group.

Mr. Lewis: They had been, but not in terms of dealing with us or in relation to this particular project.

Mr. Shymko: I allude to the fact that rumours of an election were already around in December that there might be an election coming in 1981. Do you think the climate and the atmosphere of a pending election normally give people the impression now is the time to push something because that is when you win, election time? Do you think that may have been the reason the home owners-- ,

Mr. Lewis: No. Without tending to sound naïve or sanguine or anything of that sort, that really was not a factor. This process, and my involvement in it, was one that began in the spring of 1980. If there was election talk, it was not election talk of which I was aware or even what one might hear just from day to day, nor was it ever discussed, to my knowledge, with the home owners.

My reason for being here today is to be able to confirm our view that--notwithstanding the fact that on paper there seems to have been one level of dealings here, the various quotations you have heard this morning--at the working level, dealing with the executive of the home owners' association, dealing with individuals who called me from time to time, they were aware that we were into a process where we were arranging inspections through the good offices of the warranty program, where we were negotiating with the builder and attempting to come up with what we genuinely thought would be a good solution.

My personal point of view throughout all of this, and more so today than ever, is that it would been wonderful to say to these people: "Yes, we have a complete solution. Your homes will be attended to." That would have been a much better result than sitting here today, or telling them "No." We had only one interest, and that was in an arrangement.

My role involved dealing with all the letters of the alphabet that we have here. I spoke at times with the HUDAC officials. I spoke many times with representatives of the home owners' association. It is our belief throughout the spring and summer of 1980 that there was an orderly process in effect and that the home owners were being advised. They were sometimes quite

jumpy and concerned, "Are you really doing something?" and it was my role, in part, to pass along to them what information I had from day to day or week to week, and there were frequent conversations.

At that point, during the spring portion, we were explaining the process of the investigation and inspection. As time went on and inspections were coming to a head and officials of the warranty program were holding discussions with the builder, it was my role and I did discuss with members of the executive the fact that the negotiations were going extremely well. I was personally advised--I believe Paul was, as well, but I speak for myself only--by the warranty program that at one point there was an arrangement, there was a full arrangement in hand, which we honestly believed at that point would have taken care of all home owners, whether first or second, and we were talking at that point about roofs and basements.

There was, to our understanding, perhaps even a handshake agreement. It had reached that point.

Mr. Philip: A handshake with HUDAC or with the builder?

The Vice-Chairman: Let him finish.

12:20 p.m.

Mr. Lewis: I am sorry, I will clarify that. As between the warranty program and the builder. There had been discussions, and rather than have more publicity referring to the name of his company, the builder was prepared to do what at that point the warranty program was asking of him.

This is relevant to the fact that we kept the home owners informed. At various times, particularly because the person designated as their spokesman was a civil servant, he would ask me off the record, just talking to me as one civil servant to another: "Is this a government line? Are you trying to lead me on? Is there really something here?" In good faith and honesty, and on the basis of my conversations with the warranty program, I told him unequivocally that I believed we were on the verge of a good deal and that everyone was going to be happy. He at the same time conveyed to me--"the same time" being over a period of several weeks--the frustrations within the association and the fact that they were considering all kinds of attention-getting devices.

To deal with what Mr. Philip raised before, occasionally I was asked, "Is there really something here, and what would happen if we were to take action?" My answer was almost always the same: "It is not for me to say what you do. You are a private organization. If you are asking me personally, it is my honest belief that we are on the verge of a legitimate and a good deal. You can do what you want."

Mr. Shymko: You said this personally, not on behalf of the ministry.

The Vice-Chairman: Would you wait, Mr. Shymko? You are

third on the list.

Mr. Shymko: This is just for clarification.

Mr. Lewis: I said this personally but, in a sense, as a representative of the ministry I had been talking to the HUDAC officials and was getting my information from them to the effect that things were going well at that point. So it is combined. It was both my personal and my ministerial view, if I can put it that way.

I did not in any sense have the type of conversation Mr. Philip is suggesting, that would put the end before the beginning: tell them to take a risk, tell them not to take a risk, tell them anything of that sort. They themselves mentioned in conversation with Mr. Simpson that they had discussed matters and had decided to take their own risk, a calculated risk, and to go public.

My position in advising them was that the reason the builder was at the table was primarily to avoid publicity. The builder was still building, and we had assumed that was very important to him; that if the matter became public, what was the advantage of protecting yourself in that sense? If there is publicity, then you are going to get a black eye, if that is the way it is presented in the press, and why spend the money?

In my personal view, that is almost exactly what happened. The home owners did decide to go to the press and to the radio, and you could almost feel it fall away as the builder started to call in his lawyer. My personal impression, through that period of July and August, was that what had appeared to be a good deal, a full deal and one that would have made everyone really happy, was almost frittered away. Again, it is personal opinion and now ministry opinion as well, as it is in correspondence.

Knowing the mood of the people we were dealing with as we progressed through August, they would have had nothing but a loud, unpleasant wrangling session had we told them we had an offer that covered only first owners' homes. That would have been totally unacceptable to them at that time and very little would have been gained. That is why we made reference only to the fact that we had an offer which was not of the sort they were going to accept.

My point, to summarize it, is that the mood was very clear. There was frustration on the part of the owners. There was, to our knowledge, a legitimate deal that came very close to fruition, and that was then the Ombudsman's opinion. The publicity and the newspaper articles did, to my knowledge, affect the builder and cause what was a good deal to disappear.

The Vice-Chairman: Thank you, Mr. Lewis. It is just about three minutes to quitting time and I think we will adjourn and come back at 2 o'clock. Mr. Poirier, you are first on the list and then Mr. Philip, Mr. Shymko, Mr. Baetz and Mr. Hayes.

The committee recessed at 12:26 p.m.

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Government
Publications

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
WEDNESDAY, SEPTEMBER 4, 1985
Afternoon sitting



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Bohnen, L. S., Director, Investigations
Hill, Dr. D. G., Ombudsman

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, September 4, 1985

The committee resumed at 2:07 p.m. in room 151.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

The Vice-Chairman: Mr. Poirier, are you ready with your questions?

Mr. Poirier: Pertaining to the synopsis that was given to us, I want to ask the gentlemen from the ministry whether they would say the six articles on page 3 reflect fairly well or completely the ministry's position.

Mr. Simpson: Yes.

Mr. Poirier: Without any changes whatever; is that correct? I just want to make sure of that first. I have a series of questions.

I fully agree that you were in good faith and have made some incredible efforts to help resolve this situation, which was particularly difficult. If that had been arrowed up to you and you had to make suggestions to the minister, would you be of the opinion that maybe he should not have made these complete, explicit promises from the very beginning, at such an early date as October?

It seems to have bound you as a ministerial decision, because in all the letters I have seen, unless you can correct me, you never referred to the minister's promises as opposed to the ministry's position. Could you elaborate on that, please?

Mr. Simpson: I do not think we had a different position. I know it was suggested at one point this morning that somehow we were on different wavelengths about the whole thing with respect to what would be done and so on, but I do not think we were.

If you are asking me, had the minister said, "What should I say about this?" openly, I would always advise hedging your bets a bit. That would not be a surprising piece of advice.

Mr. Poirier: In general principle, would you say the ministry is bound by a minister's promise?

Mr. Simpson: I think Mr. Drea was unequivocal. Starting very early in the game, we were not as unequivocal in our communications with the home owners through the association. I think, therefore--and I know this is the crux--the unequivocal nature of Mr. Drea's commitments has to be looked at in the context of what came after in the course of the negotiations. This is one of the themes.

The association was right to raise heck. They were frustrated, and there was reason for that, which we do not agree with. It did not matter anyway, because they had an unequivocal commitment from the minister. We are saying we made it clear. We indicated early that it was not as unequivocal as that, that in carrying it out it had to be conditioned by certain deliberations with the builder.

Mr. Poirier: If you had been the minister, would you have made such an unequivocal statement from the beginning the way he did? It is an assumption. You may answer or not. It does not bother me.

Mr. Simpson: I would just as soon not. If you take it on the basis of my sitting in the same place in the same circumstances, I would not be as unequivocal, but do not interpret that to mean I am accusing him of being wrong.

Mr. Poirier: No, we are not.

Mr. Polsinelli: May I ask a supplementary on that?

Mr. Chairman: Okay. We will call it a supplementary.

Mr. Polsinelli: Was the minister acting on his own on this, or did he consult his ministry staff before making those statements?

Mr. Simpson: I believe he was acting in conformance with what he believed to be the direction and where it was going to go.

Mr. Polsinelli: He did not solicit the ministry staff opinion before making those statements? You are at odds with what the minister says.

Mr. Simpson: No. You asked me what I would do.

Mr. Polsinelli: No. That was his question. My question was whether there was any consultation by the minister with his staff before making those statements, which were quite clear and unequivocal.

Mr. Simpson: I cannot remember whether there was. There was a lot of discussion going on back and forth at that time. Mr. Drea was very informal in the sense that we could wander into the office, or we could be upstairs talking about a bunch of things, and this would come up.

It would be unfair of me to say an unequivocal no. It could have. There was quite a long time between when we talked to the Housing and Urban Development Association of Canada and when he actually announced it. I would not say we did not have any discussions. I could not tell you for sure.

Mr. Poirier: The disturbing part is that at the very beginning of this debate, when the minister got involved, there seemed to have been a lack of communication among the minister, the ministry and HUDAC about what was expected of whom at the

beginning. It became clearer towards the end as to what the expectations were. When I look at that October 10, 1979, debates in Hansard, of which we have all received a copy, on the first page, Mr. Drea answers: "Okay. They are there. I have worked out an arrangement whereby all those homes will be repaired and I have communicated that." That is at the bottom of the first column. At the bottom of the second column, he says: "On the basis of what Mr. McClellan and Mrs. Campbell raised, those homes will be repaired. I will probably be giving details to the local members as to the specifics on how these people can get in touch...."

That does not seem as though in the minister's mind there were any doubts about whether an arrangement was there from October 10, 1979. An arrangement with whom, with what? I cannot imagine the minister saying that without having one.

Mr. Simpson: I believe what he said was in accordance with what he believed to be the case.

Mr. Philip: With whom would he have communicated if he would not have communicated with HUDAC or through you to HUDAC?

Mr. Simpson: No one.

Mr. Philip: Either the minister misled by saying he has communicated it, or somewhere down the line, either you or Mr. Lewis failed to communicate the minister's intention to the HUDAC home warranty program.

Mr. Simpson: I am not sure that follows. What are you suggesting?

Mr. Philip: The minister says clearly that he has communicated his decision.

Mr. Simpson: He is referring to his discussion with the program people, with the HUDAC board people.

Mr. Philip: So he did communicate to HUDAC?

Mr. Simpson: He is referring to his discussion in February. That is what he was doing.

Mr. Philip: Part of your contention is that HUDAC was not aware of the--

Mr. Simpson: I have not contended that.

Mr. Poirier: Maybe HUDAC was aware of it.

Mr. Simpson: Let us be perfectly clear. We embarked on a course to make this thing happen. Mr. Lewis was in touch with HUDAC, as I was. We were in constant touch with the program, and we were heading for a result.

Ralph, can you add anything to the question of whether HUDAC knew?

Mr. Lewis: To my knowledge, HUDAC was aware throughout of various statements made by the minister, going back four or five years. I have no recollection that they were not.

Mr. Bell: On that point--so that any members who have supplementaries can follow, and I do not want to lose the thread--Mr. Simpson, I want to be sure the committee understands the position you have stated thus far. Then I would like to examine it against what happened thereafter.

I take it that what you have said is, "We have to live with what the minister said on the record on October 10 and 12, 1979." You cannot categorize it in any other way than as a categorical statement that he had an agreement to repair; you are nodding your head yes.

Mr. Simpson: I would not quarrel with that.

Mr. Bell: But you say that is not the end of it; you have to look at what happened between the parties subsequently. Do I state your position fairly when I say, "We, both myself and Mr. Lewis, had regular and continuous dialogue with the home owners"--

Mr. Simpson: Through the vice-president of the association.

Mr. Bell: --"through the vice-president of the association, and during that period we told them it was not as categorical or unequivocal as the minister had said, and there were some conditions, to categorize it that way, to be fulfilled." Is that putting your position fairly?

Mr. Simpson: My only qualification of that would be, as Mr. Lewis has just indicated, the answer is yes in the sense that they knew we had to negotiate with the builder.

Mr. Bell: Putting it in its most simplistic terms, your position is that notwithstanding the minister said in October 1979 he had worked out an arrangement whereby the homes would be repaired, through the lines of communication to the association, you informed them that was not the case.

Mr. Simpson: We needed the builder.

Mr. Bell: And an arrangement had not been worked out as of the date you communicated it.

To put a time frame on it, I take it the dialogue you had had through the lines of communication described would be subsequent to October 12, 1979, going through to some time in 1980. Is that right?

Mr. Simpson: It would have started in December, when the meeting was held with the home owners' association, and run continually through to the following September.

Mr. Bell: May we say that as of September 1980 your lines of communication with the home owners on the subject we were talking about terminated?

Mr. Simpson: Yes.

Mr. Bell: Did the minister know during that period that you had told the home owners, notwithstanding his categorical statements in October 1979, that an arrangement had not been worked out?

Mr. Simpson: That we only had the partial offer?

Mr. Bell: Yes.

Mr. Simpson: Yes.

2:20 p.m.

Mr. Bell: I would like to test that. I do not know if you have it before you; if you do not, you should have it. Could you look at the standing committee Hansard of November 5, 1980. It is referred to in part in the Ombudsman's report. The committee members have before them, Mr. Simpson, pages J-528 through pages J-531 inclusive. Members, that was distributed this morning by the clerk. Do you have those before you, Mr. Simpson?

Mr. Simpson: I think so.

Mr. Bell: It is number 4 of the package of material.

Mr. Simpson: Can you give me the date again?

Mr. Bell: November 5, 1980.

Mr. Simpson: I will look at this one, thank you.

Mr. Bell: We have extra copies here somewhere.

Against the background of the chronology we have just reviewed, this is what the minister said at this meeting attended by Margaret Campbell; I believe Ross McClellan attended the meeting, although he is not in these four pages, and others participated.

This is against the background, Mr. Simpson, that things are not going well in November, are they? HUDAC has already taken one position, the minister has just fired back his response the day before saying: "Hey, what do you mean?" and about 10 days later we get HUDAC's further response. This is when people realize, or HUDAC, for whatever reason, takes a position which has theretofore been inconsistent with the minister's statements on the record.

Against that background, and what you have told us, this is what the minister has said. If you look at page J-528, on the right-hand column, the first full paragraph, the second sentence, Mr. Drea says:

"We looked at that thing, and at the proper opportunity I used my good offices and obtained the following commitment from the home-building industry: While there was no legal responsibility--"

Mrs. Campbell interrupts and they start to talk about repairs. Then you get down to the bottom part of the page where next Mr. Drea is quoted:

"It was a very fair request. The commitment that was reached was that the deficiencies would be repaired, because I wasn't going to get into legalisms with the industry represented by the Housing and Urban Development Association of Canada. I have never discussed this matter with" the developer "and I am not going to get involved in it. I think I explained it with a very simplistic approach."

If you go over the page, still with Mr. Drea, the fourth line down on the left-hand column, and he is still talking about HUDAC:

"Since they had no legal power under terms of a registration or what have you to enforce this, the commitment was that if after the negotiations, which involved all of these inspections and finding out about the material" the developer "maintained their original position that they had no legal responsibility under the home warranties program to do anything, the home warranties program would step in."

"Our commitment was that since there was responsibility, forgetting legalism, we agreed on this point that we would proceed with orderly negotiations."

Skip over to the right-hand column, under 11:40 a.m., the second sentence. This perhaps is one of the most important things Mr. Drea has stated on the record:

"What I really wanted was a very simplified remedy whereby those houses would be treated as though they had just been bought and were under warranty. It would be exactly the same procedure because the commitment to fix was within the terms of the warranty. We presumed HUDAC was the best way to do it, that this was your goal to do it as perhaps it should have been done, and if there had been an act in 1974 they would have done it."

He is telling us, perhaps for the very first time on the record, the parameters of his understanding and expectation. Then he gets down, God bless his soul, to the nitty-gritty of it. It is right down at the bottom of the page, the last paragraph, the second sentence:

"I want the impasse broken. Mr. Simpson has instructions: the impasse is to be broken. If that impasse isn't broken, then, Mrs. Campbell, I have played my cards, because I have done everything that I agreed to do and Mr. Simpson has carried it out in an exemplary fashion that was the other side of the commitment; they thought it could be done reasonably and without calling in the entire industry to foot the bill or the warranty." I am talking about HUDAC. "They" is HUDAC.

"We want that impasse broken or we are going to say the minister has a commitment from the HUDAC home warranties program that if this case can't be resolved, it will resolve it. How it

deals with" the builder "I don't know." That is a long-winded way. It is interesting reading down the pages about how Mr. Drea looks upon the lawyers' contribution to all of this.

Mr. Simpson, all of that is to prep us. What Mr. Drea said on the record does not appear to wash with what you have just said about the ministry communicating to the home owners at material times that there is really not a deal. Against the background of all of the problems we now know about, in early November 1980, Mr. Drea again speaks categorically. He said: "If the builder is not going to do it, then I want the impasse broken. HUDAC's going to do it."

I would like you to comment on that. It appears that the minister's stated view of the matter is not consistent with what you have just told us.

Mr. Simpson: I do not think that is correct at all. What we indicated to the home owners' group in August or September is that, yes, there was an offer but it was not what we were looking for. We did not get into the details of the offer. When we discussed the offer with Mr. Drea, he said, "That is not good enough." Then it would be embarked upon.

I am not sure of the timing of this. There are two sets of letters to the warranty program. There is one set that said, "Hey, this is not what we thought was going to happen." There was another one to Ernest Assaly. All I can say about the minister at this stage is that he was still expressing, against the backdrop of what was going sour, his determination to get something done; he wanted the impasse broken.

Mr. Bell: Sorry, Mr. Chairman--

Mr. Simpson: Yes, but he went further, to say, "We want that impasse broken or we are going to say that the minister has a commitment from the HUDAC home warranty program. It will be resolved."

Mr. Bell: You are saying that is merely the minister's statement of his own opinion?

Mr. Simpson: Yes, he is saying, "I want to get this thing done." That was his position. He still wanted it to happen.

Mr. Poirier: I want to finish my comments. Also on October 10, when I look at page J-94, the second one, it says, "But they," being the houses, "will be brought up to standard," in the first column, and, "Furthermore, it will be done at no cost to the home owner."

On October 12, at the bottom of the first column, "The arrangement I have worked out is that the deficiencies will be remedied, whatever the deficiencies are." And in the second column, "It will be done at no cost to them and at their convenience." That is pretty black and white.

Mr. Simpson: It is very unequivocal throughout.

Mr. Poirier: I cannot imagine he would say things like that without having an arrangement. How could it be possible he would say things like that without having an arrangement?

Mr. Simpson: I cannot put words in his mouth, but I think he believed that when we had it going in the first place it could be got back on the rails. He sought to do that through the offices of the chairman of the board and the president of the corporation. He continued to look to that avenue, some avenue to put on and to bring it about--persuasion, negotiation, or whatever.

Mr. Poirier: There is another paragraph here, the last one if I may. It says, "The question was left as to whether Pastoria Holdings would be doing it or whether HUDAC would be doing it, and if Pastoria refused to do it then HUDAC would do it, but it would be done to HUDAC's specifications, on the basis that if the person who has the remedial work done is not satisfied with it, it would be exactly the same as if he or she had remedial work done under HUDAC."

With a commitment like that, with the minister talking this way, if I had been a home owner, I would have known what to expect going to bed at night. It is very clear. There are no grey zones left whatsoever in my mind as a consumer advocate. In our faith as consumers, we should be able to believe the minister when he makes very clear-cut statements of this nature.

2:30 p.m.

Mr. Simpson: One thing you have to remember is that it was unequivocal in the fall or the winter of 1979. As the program evolved, it was still looking pretty good. I am on record here in the standing committee on administration of justice, in our estimates, as saying: "It is looking good. It is about to happen." We all were optimistic, because that is the way it was shaping up.

There is no question, come the fall of 1980, having lost that first thing or having a partial deal, it was uphill to get it back on the rails. It was really uphill.

Mr. Philip: If we look at Hansard for November 5, 1980, it is fairly clear. It says that Mr. Locke and HUDAC are clearly involved. He says: "Mr. Locke has been involved. We are not going to meet with Pastoria." So it is not the ministry that is going to meet. He is clearly saying HUDAC is going to meet. They are the ones that are going to put the finger on the builder.

Then he goes on--and I think legislative counsel may have made a slight mistake in reading this--he says, not that the problem will be resolved, but rather, "if this can't be resolved, it will resolve it." The "it" is the HUDAC home warranty program. He says, "I want those houses fixed." Would you not say that is a fairly clear directive to the HUDAC home warranty program from the minister that either you come to an agreement or you fix the houses?

Mr. Simpson: I do not know if I would characterize it as a directive to the program. We were talking to the program, he was writing to the program, he was asking the program to do things.

Mr. Philip: Is it not fair to say that HUDAC or Mr. Locke would have been sitting here in the justice estimates? I chaired the Justice estimates. You know that when the HUDAC home warranty program came up, they would have been here answering questions from us.

Mr. Simpson: We would have to go back and check to see if it was in the records. Mr. Locke very seldom came to committee sessions here. I think we virtually always answered for the warranty program. Mr. Lewis, do you have any recollection of that?

Mr. Lewis: No, I really do not, except I do not think they were here every time. I cannot tell you how many times Mr. Locke was here. I just know he was not here in every case.

Mr. Philip: I find it incredible that they would not be aware of the directive, knowing how the estimates process works and knowing what your responsibility would be as the director of that department at least to send them the Hansard and point out what was said about them. I find it incredible they would not be aware that this was a fairly clear directive from the minister. "Either solve the problem or else." Mr. Drea was not one who minced words. Sometimes we did not always like what he said, but what he said was fairly clear.

What I find interesting is the history of this. In December 1979 we have what seems like the first backtrack, in which you write a letter stating that it was only substantial deficiencies that would be covered. Then on several occasions, the minister clearly contradicts that in his various statements in the House. He contradicted that by his earlier promise. Later in Hansard you have clear statements saying: "Look. It is going to be fixed. Either the builder fixes it or HUDAC goes ahead and does it." That is a clear statement by the minister.

Mr. Simpson: Yes.

Mr. Philip: I want to ask you about HUDAC and its powers. I found it interesting; if I can find the quote on page 23 of our documents. "In a letter dated October 29, 1980, Mr. C"--I assume Mr. C is spokesman for the HUDAC home warranty program--"advised Mr. A"--whom I assume is you--"that HUDAC had done everything possible to facilitate the efforts of Mr. Drea." I find that an interesting statement.

Is this company still registered under the HUDAC home warranty program?

Mr. Simpson: No.

Mr. Philip: But it was registered on October 29, 1980?

Mr. Simpson: Yes, but probably not by that name. The companies and the individuals operate under a variety of names, so whether or not the exact name of this company that built these houses--

Mr. Philip: That is another debate, but it was registered under some name that you could get at?

Mr. Simpson: Yes, the same principals.

Mr. Philip: All right. Would you not agree that, under the Ontario New Home Warranties Plan Act, section 7 and subsection 8(2), in fact the registration of this company, under whatever name, could be revoked on the grounds of unwillingness to complete performance of contracts?

Mr. Simpson: Yes.

Mr. Philip: Why would this guy still be operating in 1980 after not fulfilling all of his contracts with these people?

Mr. Simpson: That is very easy to do. These houses were built in 1970, 1971, 1972 and 1973. The warranty program came into effect by law January 1, 1977. The warranty program officials examined the builder's track record from 1973 to 1976, surveyed a number of home buyers who had bought homes and checked the construction. They decided that, notwithstanding the history going further back, the current construction and the current customer service was satisfactory and they did register them. They made that determination, which is their statutory prerogative to make, and decided, because of the construction in the mid-1970s, that he and his companies were fit for registration.

Mr. Philip: But there is a reregistration process?

Mr. Simpson: Yearly.

Mr. Philip: Under that process, subsection 8(2) says: "Subject to section 9, the registrar may refuse to renew or may suspend or revoke the registration for any reason that would disentitle the registrant to registration under section 7 if he were an applicant, or where the registrant has a record of breaches of warranties or failure or unwillingness to complete performance of contracts or is in breach of a term or condition of the contract."

Look at the middle one, "unwillingness to complete performance of contracts." This guy had a contract with these people to provide houses that did not have roofs that came apart and that did not have basements that would split open and so forth. Why did he keep getting registration year after year when you knew this?

Mr. Simpson: By the time 1978-79 came around, it had been eight years since these homes were constructed and this builder was building, through his various companies, many hundreds of units a year with a satisfactory record of construction and servicing. He was not an angel; he would not be in the top 25 builders in this province in regard to complaint history. But he was building a satisfactory product and he was servicing his customers and keeping his complaints down.

I know what you are getting at. We preside over a regulatory operation--as you know, we have been through this before--with a number of registrars exercising substantially the same kinds of powers. I suggest it is not proper to threaten or propose to take

away the registration of a company that built so many units a year for seven years or so when the construction of late has been adequate or satisfactory. Not only would it not be proper, but I would venture to guess it would also not succeed before the appeal bodies. There is no way.

Mr. Philip: This is a builder whom the minister, on December 13, 1978, describes as follows, "I have seen them"--

Mr. Bell: Mr. Philip, I am going to give you a piece of gratuitous advice. Unlike some of my colleagues, I am not totally confident legislative privilege extends to reading into the record what somebody else said in another standing committee. I have read that piece and I am a little concerned that if it is read into the record, as happened to Jack Riddell a few years ago, someone might want to take issue. I am advising you not to do it. I would sooner interrupt you now than later.

Mr. Philip: Since I do not like spending time in court rather than in the Legislature, I accept your advice.

Mr. Bell: May I suggest you serve your purpose by just referring to the page references in Hansard? If anyone wants to read it, he can.

Mr. Philip: Would you agree that on December 13, 1978, the minister's description of the builder was a lot stronger than probably even the opposition parties would have used? In fact, it was a word not normally associated with--

Mr. Cordiano: What is the reference?

Mr. Philip: December 13, 1978.

Interjections.

Mr. Philip: I think this is an insult to the whole circus world. I happen to be a lover of circuses and for Mr. Drea to apply this description is an insult to that world. Would you not agree? Or would you say it is an adequate description?

Mr. Simpson: I am not going to say. I would like to throw in one other thing because I think it matters. When the controversy arose over the registration of these groups of companies, our position was challenged. We supported the program in its determination. We said in writing the warranty program people, in our opinion, had conducted themselves appropriately in the way they did it, what they looked at and the decision they made.

When we go on the record saying such a thing, it becomes a matter that can be examined by the Ombudsman, who was then Mr. Morand, I believe. He examined the ministry's behaviour in the matter, the fact we went on record as saying the program did the right thing, and I believe--I hope someone from the Ombudsman's office can address this--he said we had done the right thing, or had not done the wrong thing and were not to be censured.

I am not saying that indicates his office blessed the registration, but it is getting into the same sort of ball park. The question of this company and its registration goes back long before this issue arose, and it was the subject of prior proceedings.

Ms. Bohnen: If I may interrupt for a second, I do not believe that is factually correct. These people pressed a complaint about the registration of this builder and Mr. Morand took the position it was against HUDAC, not the ministry, and therefore he could not investigate. I would not want you to think an Ombudsman had found the builder's registration was a reasonable act. He never expressed an opinion on it.

Mr. Simpson: I did not suggest that.

Ms. Bohnen: I thought you had.

Mr. Simpson: I suggested the Ombudsman looked at what he could look at, which was our expression as a ministry that the right thing had been done. Of course the Ombudsman could not look at what HUDAC did. He could look only at what we did, and we put on the record that we thought they had done the appropriate thing.

Mr. Philip: Was there at any time the suggestion by you, by the HUDAC home warranty officials, by anyone in your ministry, that perhaps, since it had to have its registration renewed once a year, this company should be a little more conciliatory, a little more flexible in dealing with this matter?

Mr. Lewis: To my knowledge, the company was conciliatory and flexible in the sense it had come up to what I described as a handshake deal with the warranty people. There was good faith on their part to that extent, as I indicated earlier this morning. It was from that point on that things went downhill. There was flexibility shown, clearly.

Mr. Philip: There was flexibility up to what date?

Mr. Lewis: I cannot be specific in giving you a calendar date, but it was midsummer of 1980.

Mr. Philip: In the summer of 1980, there was a willingness on the part of the builder?

Mr. Lewis: To my knowledge, there was, yes.

Mr. Philip: You had a written offer at that time?

Mr. Lewis: Not to my knowledge.

Mr. Shymko: Mr. Chairman, I do not want to interfere in the questioning by Mr. Philip, but I do not see any relevancy of the registration aspect with the whole recommendations as presented by the Ombudsman on this particular case.

Mr. Philip: The relevance should be fairly clear to Mr. Shymko. If the government has responsibility, and if it is claiming it has taken all the necessary steps, as HUDAC clearly said in its letter of 1980, and if it has not used what is its ultimate weapon, which is the registration of the company, then I suggest to you that it has been negligent and that the statement saying it had taken every possible effort is simply inaccurate and untrue.

Mr. Shymo: I believe Mr. Drea answered that in the questioning that was done by Mrs. Campbell in the standing committee back on November 5, 1980, on the whole question of registration, and I believe the opposition parties were quite satisfied by that, at least in November 1980.

Mr. Polsinelli: That question was also raised at the standing committee meeting on December 13, 1978.

Mr. Shymko: Exactly, December as well.

Mr. Polsinelli: It has been addressed on a number of occasions.

Mr. Philip: If you want to speak, speak up and show us where it has been addressed. Give us the exact words.

Mr. Chairman: Mr. Philip, do you have any other questions?

Mr. Philip: No, I would like Mr. Shymko to speak. Far it be from me to interrupt him.

Mr. Chairman: He is the next speaker. Go ahead, Yuri.

Mr. Shymko: I am just looking over the deliberations of November.

Mr. Polsinelli: Here is one.

Mr. Shymko: Why do you not read the December ones and I will read the November ones.

Mr. Polsinelli: On questioning from Mr. McClellan--this is December 13, 1978, page 6049, right-hand paragraph about the middle of the way down--Mr. McClellan indicates: "It seems to me it would have been legitimate at the time to say to" the builder "and its offspring: 'If you want to registered under HUDAC, you settle up with these folks. You settle up with these folks you've ripped off, then we'll look at your application to register.' But that wasn't done."

Mr. Drea answers, "Yes, obviously it wasn't done.

Mr. Davison then says, "Then they should settle up or you should toss them out."

Mr. Drea says: "You can't throw people out retroactively. Where do you come from? You come out of right or left field on these things."

Mr. Bell: Can I assist, perhaps to break the logjam? Mr. Drea refers to certain lawsuits threatened and real back in 1979. I have some knowledge of the background of this in other ways. The owner and his legal counsel said to the ministry quite bluntly back when consideration was given to registration or not, "If you don't, we will take you to court," and specifically, "You can't hold us up for something that happened pre the act." As a matter of law, like it or not, the builder and his lawyer were correct. I think that is maybe why the Ombudsman disregarded this issue as part of his consideration of the case.

Mr. Philip makes a very good point, but I think respectfully that the point was subsumed by the legalisms back in 1979. I do not know, Mr. Philip, whether than will help or assist in getting to another topic perhaps.

2:50 p.m.

Mr. Shymko: If I may add the comments on November 5, Mr. Drea answers Mrs. Campbell when he says: "Informally I was there in 1974, 1975, 1976 and formally I was asked by you and Mr. McClellan--and you were very fair about it; you weren't dwelling, but you did not agree with what had been done in terms of the registration--to use my good offices to see. It wasn't even a demand--"

Mrs. Campbell says, "It was a request." He says: "It was a very fair request. The commitment that was reached was that the deficiencies would be repaired because I wasn't going to get into legalisms with the industry represented by the Housing Urban Development Association of Canada." He points out, "I was not going to get into legalisms and I pointed out, in fairness, that this does not mean existing original owners." This is with regard to the legality, but on the whole question he was trying to assist.

I understand the minister's comments on November 5 to be, "I have played my cards, because I have done everything that I agreed to do and Mr. Simpson has carried it out in an exemplary fashion that was the other side of the commitment; they thought it could be done reasonably and without calling in the entire industry to foot the bill or the warranty." And it deals with HUDAC. "We want that impasse broken or we are going to say the minister has a commitment from the HUDAC home warranties program that if this cannot be resolved, it will resolve it." This reference, in my understanding, is that HUDAC will resolve it and not the ministry. "How it deals with Pastoria, I do not know."

Mr. Philip: I have read that record before, so we are in agreement. What does that add?

Mr. Shymko: The whole issue has nothing to do with registration. The issue that is being discussed with regard to how reasonable the ministry was in resolving this problem deals with

the position of the ministry and the maximum efforts that the minister made, or whether or not the minister misinformed willingly and knowingly the owners of these properties, or that apparently there was a problem of communication between HUDAC and the minister, or whether HUDAC was misinforming the minister.

If the minister himself is really the guilty party, so to speak, then we should look at the record of what statements were made by the minister, with regard to the maximum effort they made. I get the impression that HUDAC was quite reasonable. There was what was almost a handshake agreement at a certain stage of the process, and the minister even disagreed on the 80 per cent compensation which was being offered, pressing for even more, that 100 per cent be done. That was from the minister's point of view.

My understanding of why the information of that offer was not given to the home owner's association and the home owners is that the minister still was trying to take a reasonable offer of 80 per cent, was not satisfied and pursued it even more. That is a very reasonable position on the part of the ministry to accentuate the problem and to try to resolve it 100 per cent.

I cannot see the minister as being guilty, although I understand very well the eclectic personality of the minister of the time whose nature and personality we all know. He often shoots from the hip, so to speak, and makes comments that later on have to be verified. But I looked at the comments he made in the documentation, and he seems to have pursued quite adamantly a sincere attempt to resolve that particular issue.

The problem is that we cannot go after HUDAC because it is not an organization which is under the jurisdiction of the Ombudsman. We are going after the minister whose jurisdiction the Ombudsman apparently can follow and can make recommendations. There are politics in that. I know of the frustrations of being an Ombudsman because a minister acts, as we do, politically. We acquiesce to concerns. We try to assure people that the maximum will be done. Very often, a statement is made impulsively, although perhaps sincerely enough, as may have been the case with the then minister. It could have been an impulsive statement following, as I understand it, a four-minute conversation. Is that correct, Mr. Simpson?

If we have to go after anybody, it should be HUDAC. It is unfortunate that HUDAC is not under your jurisdiction, Dr. Hill, but if HUDAC were, I am sure that would be the agency you would go after, but you cannot. I am sorry, I am saying things, but that is the frustration I experience, because I would like to go after HUDAC and not the minister.

Mr. Polsinelli: Mr. Shymko is being a politician.

Dr. Hill: Yes, I understand it. Mr. Shymko realizes as well that the minister made that statement four times; it was not impulsive.

Mr. Philip: What you clearly have, Yuri, is that there are four clear statements by the minister that action is going to be taken. Then comes along a Christmas recess, an election and November 26, 1981. After this he blames it on the home owners for going public. It has been public all along. You have had a law case; you have had them suing; you have had the petition as early as 1978; and I do not know what is more public than a petition in the Legislature. You have had a whole series of public stories in the newspapers about it all along, and then right up to the last statement, which was December 12, 1980, in which Mr. Drea clearly promises full compensation for the home owners. Then on November 26, 1981, he says: "Tough luck. It is because the home owners went public." If that is not the breaking of a promise, I do not know what is.

Mr. Shymko: We have to be very careful in being fair in dealing with the case. With the relationship of the publicity given to this and the process that was being put in place which did not at least warrant publicity, the preferred route would have been that of quiet negotiations that would have resolved the issue. I am led to believe by the comments I have heard both from Mr. Lewis and Mr. Simpson that, had this not gone public, perhaps the atmosphere of tension would not have been there and maybe there would have been a very high possibility of resolving this issue.

I cannot really judge why the home owners' association decided to go public. As I indicated in my earlier question, very often one uses the rationale that under some form of pressure people give in, either us on the political side or people on the other side, with whom politicians negotiate, especially close to an election process, but I cannot really allude to this. A decision had been made--

Mr. Chairman: This discussion has possibly gone on long enough.

Mr. Philip: Mr. Chairman, if I may, just one last comment. To suggest that the home owners suddenly were the ones who heated up the debate by going public, when the minister as early as December 13, 1978, called that company by names which legislative counsel is even afraid I can get into libel problems with by using in this committee today, is to pass the buck on to the home owners. That is complete nonsense. If anyone heated it up, it was the comments of the minister in the House. The minister said exactly what he thought of this company and promised these home owners in no uncertain terms on four occasions that action would be taken and made it clear exactly what that company was going to do and what he thought of that company.

If anyone heated it up, why not blame the minister for heating it up, rather than blame the home owners? You cannot simply have the ministry get out of it by saying, as Mr. Lewis seems to indicate, that somehow the home owners are responsible for the deal falling through. If there was anybody who was being nasty with the company, it was the minister himself. He said it publicly; he did not say it behind closed doors.

Mr. Shymko: Let me ask Mr. Lewis what--

Mr. Hayes: On a point of order, Mr. Chairman: Are we going to continue with this debate back and forth? I have been on the list for some time now.

Mr. Chairman: The next person on the list, with all due respect, Yuri, is Mr. Baetz.

Mr. Baetz: I have one observation and then a question to the ministry. The observation is this. As we have heard frequently here today, the premise is that the home owners were really led down the garden path by statements the minister made; there were some commitments there. As has been pointed out, a flamboyant minister did--and we have had it read in the record here today; there were quite a few statements that obviously were a commitment on his part.

But it struck me, if you look at the totality of especially the November 5, 1980, Hansard report, the totality tells me, if I were a home owner and I were to read the whole thing, I would not want to bet my mortgage on the fact that this is going to be resolved, because all through the piece comes this impasse.

3 p.m.

The minister is also equally determined he is somehow or other going to break the impasse, even though he states on several occasions here that he knows he does not really have a legal leg to stand on, because these homes were built before the Ontario New Home Warranties Plan Act became effective in 1977. So he knows he cannot fight it under that one. Surely there are warning signs and caveats here that, in spite of a minister determined to deal with the builder and to deal with HUDAC, there are some very unresolved issues here.

The thing I find interesting is that during the course of this time when all these debates were taking place, I suspect a lot of the other home owners felt about the discussions the way I have, that I would not bet my mortgage on them, because 120 of the 144 got out. They sold. That is the statistic I think we had.

That is the observation. I think we have to look at these debates here in their totality if we are going to hang the whole case on the fact that the only reason we are in this débâcle here today is that the home owners were misled, misinformed, given false hope or whatever by what the minister said. All through the act here there are big signs of trouble.

Let us assume that the Ombudsman, the House or whoever does it were to accept the recommendations of the Ombudsman. What legislative powers do you have to do those things, especially in the light of the fact that this falls outside the warranty act? Are there legislative things? Is this the kind of debate or the kind of situation you get into frequently or is this an aberration? What is even legally possible?

Mr. Simpson: No, we do not have anything. There would have to be an ex gratia arrangement, a grant or something suitably approved by somebody. We do not have a legislative home for it.

Mr. Baetz: Does it automatically follow that if the House supports the recommendation of the Ombudsman, then somehow or other the money is found?

Mr. Simpson: Presumably there are instruments or mechanisms within government to do that sort of thing.

Mr. Baetz: But you do not have legislation right now to follow through on this.

Incidentally, this is the other thing I wanted to point out here. Mr. Drea said: "I'm talking about the big one, where if someone is going to fix it and it comes down to the end, you guys can figure out who is going to fix it because the minister isn't." He is saying in his statement the ministry is not going to correct this. We are not going to pay for it. He said it.

Maybe Frank Drea at that time was thinking of the legislative authority he had under the warranty act and that, this being outside of it, he could not fix it and somebody else would have to.

Legal counsel has a furrowed brow on that one, but it is right--

Mr. Bell: No. I am just trying to find it.

Mr. Baetz: It is on the right-hand column under the 11:40 a.m. comment in the second paragraph: "We didn't call in our cards." Often we did not know what Frank meant by some of these statements. "I'm talking about the big one, where if someone is going to fix it and it comes down to the end, you guys can figure out who is going to fix it because the minister isn't." When Frank Drea talked that way, he meant it.

Mr. Bell: It also meant it was going to be fixed.

Mr. Baetz: It was going to be fixed, but not by the ministry.

Mr. Bell: He is pointing a finger at HUDAC right there.

Mr. Hayes: It has been so long. First of all, I want a clarification on this synopsis of the detailed summary 1, where Mr. Lewis was quite concerned that this one little sentence should be taken out of there. That was kind of let go. Did we decide that would be left in or taken out?

Mr. Sheppard: They revised that sentence.

Mr. Bell: What you have, because you will not resolve it today, is the Ombudsman stating what he believes to be the situation as originally drafted. You have Mr. Lewis and Mr. Simpson, who say: "Look, it should be changed to read that in

substance it was the home owners who consciously took the calculated risk by generating publicity and yes, before they assumed that risk, they had some discussion with the ministry on that subject." That is as far as we can take it. You will have to decide when you deliberate which of the two versions is the appropriate one, if it makes a difference.

Mr. Hayes: Okay. I just wanted to know.

Mr. Lewis: I do not want to expand this, but I did believe we could characterize it here in the synopsis. It is not a matter of issue between ourselves and the Ombudsman. That was when Frank Drea and the Ombudsman asked us for our views on the synopsis. We asked at that point if it could be included, but when it was actually retyped in the Ombudsman's revised synopsis it was turned around. It is not a point of contention.

Mr. Hayes: It is not important. We will leave it the way it is now.

It appears to me that just about everyone involved in this situation agreed the home owners had a legitimate complaint. It seemed to me Mr. Drea made certain commitments to the people and everyone understood they should be accommodated. Then for some reason, when the people did go to the news media on this, it appears to me this was maybe a cop-out, saying, "This is our chance to get out of this particular issue." I do not think it was very fair.

What we are being told here today is that the ministry was going to take care of this problem; it was going to compensate these people. Then they went to the news media; so it changed its mind. You agree they do have a legitimate beef.

Mr. Simpson: Could you say that again and then give us an opportunity to comment?

Mr. Hayes: All right. We will give you an opportunity. What I am saying is that first of all there was an agreement there to rectify the complaint. Unfortunately, the developer was the guy the people allowed to skip out of the whole thing or who shirked his responsibilities. What I am saying is that I am getting the impression you are agreeing on it now. Outside of the people going to the news media, what is your real reason for not fulfilling the commitment that the Minister of Consumer and Commercial Relations made?

Mr. Simpson: Our belief at the time was that as a result of the work being done, we were going to get what we were after. We then woke up in September with a partial offer. We did not think it was going to turn out badly.

Our position is that it could have been avoided. They did not have to go to the media. I know it has been said they were frustrated and they had every justification to be so because they were not getting feedback from us. We were saying: "No way." We were on the telephone to them. We were explaining what we were doing and why. We could not let them off the hook that easily for going to the media.

3:10 p.m.

I am the one who had the telephone conversation about the calculated risk. I remember it to this day. I remember it very vividly, even though it was so long ago, because it was early in the morning. It was the vice-president of the home owners' association; as I explained before, he was a fellow civil servant who got in early and used to phone.

I was sitting at my secretary's desk doing something, taping something or something like that. He called. It was towards the end of August. I just lit into him. I said: "What the hell are you doing?" I remember, because it got a little heated. I pointed out that the subject builder had been through a lot in his life, and he was not about to be pushed around by somebody running to the press. What did they think they were going to achieve?

That is when I was told, "We talked about it, and we decided to take a calculated risk." As far as I was concerned, after all the work we had done trying to make this thing jell, the time that had been spent, that was kind of a slap in the face. I thought, "Okay; you were told." I was mad because of everything we had gone through to try to put this thing together. We spent a lot of time, and somebody spent a fair bit of dough making this happen. It just was unnecessary.

Nobody has ever mentioned this, but one night we went through a five-hour press conference in our offices. We were having a meeting with the home owners' association. Was it July?

Mr. Lewis: It was late July or early August.

Mr. Simpson: I walked out of my office one night--it was a 5 p.m. meeting--and who was sitting there? It was Cecil Foster from the North York bureau of the Toronto Star. I said, "Cecil, what are you doing here?" "I am here for the meeting."

Next, in comes Doug Yonson from the Globe and Mail. I know him too. He was a summer student at that time. I said, "Doug, what are you doing?" "I am here for the meeting." I asked, "Who invited you?" He said, "The home owners' association." I said, "Why did they do that? We are supposed to be talking about the details of the program." "They wanted to have us here."

So we had a five-hour press conference. I was not going to exclude them. We literally were there until about 9:30 at night, back and forth, "Yes, you did," "No, you did not," "Yes, you were," "No, you are not."

All Mr. Lewis and I are trying to get across is that in many ways the documented stuff does not reflect what happened, the nature of the communications, what we were telling them and how thoroughly we were attempting to communicate with them. The flavour just is not there, and our only objective at this point is to clarify that.

Mr. Hayes: Prior to people going to the news media, the ministry, including the minister, felt it had an obligation to support those home owners.

Mr. Simpson: We thought we had a deal.

Mr. Hayes: Do you feel you do not have an obligation now towards those same people?

Mr. Simpson: I do not.

Mr. Baetz: On a supplementary: In your discussions with these people, whether it was on the telephone to your friend or whatever, did you make it perfectly clear that you did not have legal muscle vis-à-vis the builder to make him do what the ministry and the minister wanted? Was that made very clear to them and that you had to depend a little on soft words with the builder and hope he would come across?

Mr. Lewis: That was made very clear. I think it was quite explicit on many occasions.

Mr. Sheppard: I want to ask Mr. Simpson something. On November 5, 1980, at the bottom of page J-531, Mr. Drea said: "In the meantime, if people do have questions they should call Mr. Simpson because he is in day-to-day contact. Mr. Simpson is very good. Mr. Simpson has a blank cheque from the minister."

What do you think Mr. Drea meant by that comment? I can read two or three different interpretations into it.

Mr. Simpson: I frankly do not know.

Mr. Sheppard: Okay.

Mr. Simpson: If it will help, Mr. Lewis and I were handling all the communications and so on; so I presume he just meant, "These are the people who are doing the job; if you want something, talk to them."

Mr. Sheppard: This session today is a bit long and confusing, but I have had two or three dealings with HUDAC--this has nothing to do with this committee--and there should be legislation put into it so they can clean up their act and do a heck of a lot better job than what they are doing, because I have not got a hell of a lot of sympathy for them and some of the things they have done in my riding.

Was it when HUDAC did not want to handle it any more, and the ratepayers' association, that the minister got involved, or you and Mr. Lewis?

Interjection.

Mr. Sheppard: I will ask the same question a different way. When did the ministry get involved?

Mr. Simpson: The petition would be the first--

Mr. Lewis: It could possibly be at the time of the registration, which came first. Perhaps the registration issue came before the petition; so it would be a little before the petition.

Mr. Sheppard: A little before the petition.

Mr. Simpson: The registration controversy, I guess, was in 1977 or early 1978.

Mr. Lewis: That is right; so that would predate the petition.

Mr. Sheppard: It was all in there at about the same time anyway.

Mr. Simpson: Chronologically, it all just evolved. First, there was the controversy over the registration and all of that, and then into the petition and--

Mr. Sheppard: It went on to the Ombudsman, and here we are here today trying to solve it and understand it.

A few minutes ago you mentioned a five-hour press conference. That is hard for me to understand. Usually press conferences last about 10 or 20 minutes to half an hour at the most. I am wondering if you want to rephrase that and call it a meeting for five hours instead of a press conference?

Mr. Simpson: No. It was a press conference. Doug Yonson and Cecil Foster were there throughout, taking notes and listening.

A lot of the time was taken up because the president of the home owners' association collected Hansard and other things and read tremendously extensively into the record. There was a lot of that sort of thing going on, with people asking: "What did you mean by this? This sentence says these words. What does it mean?"

There was a lot of that sort of thing. I do not know how to describe it exactly. There was a lot of "What does this word mean?" and "You said this," on and on.

Mr. Sheppard: You had a five-hour meeting then, and not a five-hour press conference, even if the press were there from the three main papers. My interpretation of a press conference is short and to the point; you ask three or four questions, and then it is over with.

Mr. Simpson: The reporters were asking questions too.

Mr. Lewis: You are touching on what we have described as the flavour of the meetings, phone calls and communications. They were long communications. They were lengthy discussions. They were full discussions, and they were frequent discussions.

When you say you have a hard time believing that four and a half to five hours can be a press conference, we were having a lot of trouble with that ourselves during the course of that. It was a very difficult meeting, and it was part of a very difficult process where we felt we were balancing the goodwill of the builder, who at that time we felt was making a bona fide offer, against the manner of dealing with the home owners--weighing against the offer--which eventually caused, in our opinion, the offer to be scaled down.

Mr. Philip: Mr. Lewis, would you agree that this Ontario New Home Warranties Plan Act is about the only act that you know of where there is not an explicit clause in it that gives a method by which the minister will convey directions down through the system to a program?

Mr. Lewis: I cannot quickly say yes to that. I agree there is no system provided in that act for the minister to direct the corporation.

Mr. Philip: There is in other acts.

Mr. Lewis: Pardon?

Mr. Philip: This is an omission in the act.

Mr. Lewis: In our other regulatory statutes there is reference to a minister and there is--

Mr. Philip: For example, we have the Ontario Highway Transport Board Act. There is clearly a section in that act that says the minister will, from time to time, make policy statements and directives to the transport board.

Mr. Lewis: Mr. Philip, as I said before, I do not disagree with you. There may be other statutes.

3:20 p.m.

Mr. Bell: If I can assist, just to remind Mr. Simpson, when we last talked about HUDAC on another case, we talked about the fact that this was the only piece of legislation within your ministry's purview wherein the corporation or the body created had its own regulation-making powers and that there was not a vehicle through cabinet or the minister to sanction or oversee or approve those regulations.

When we last met, someone told us about discussions that were then under way with HUDAC and within the ministry as to whether and to what extent the legislation has to be amended. Does that help?

Mr. Lewis: If it brings it within the regulations and within our area; but on the question of whether there are other bills within government, I cannot comment.

Mr. Bell: Whether there are other bills is not relevant to Mr. Philip's question.

Mr. Simpson: We should hear what he is driving at first. If he is driving at the question of whether, in other regulatory statutes, the minister could dictate how registration is done and who gets registered, the answer is no. If he is driving at the question of who makes government policy in the other regulatory statutes, the answer of course is yes, quite obviously, the minister makes policy and can change the law and make regulations. If it comes to regulatory decision-making and the application of the rules, the answer is no. It is the same. It depends on what you are driving at.

Mr. Philip: Would you not agree that on November 5 what was clearly given was a directive, and the directive was given in no uncertain terms by the minister in Hansard.

The minister has only two ways of giving the home warranty program a directive. He can not do it under the act; so he has to give it by a policy statement, and the logical place to make a policy statement is in Hansard or in the Legislature. What he gives is a directive. The directive says: "We are taking full responsibility. The houses are going to come up to standards. I, as the minister, am saying this, and it is going to be done." That is about as clear a directive as you have. Could you not say that he has taken responsibility?

Mr. Simpson: Hansard speaks for itself. I cannot add to that.

Mr. Philip: So the minister has taken on the responsibility under this in what amounts to a policy statement, which is the only way he could have done it, in the Legislature. He does not have a system under the act to pass down the rules and regulations or to give a directive; so he does it in the way in which he has a method of doing it. The thing is fairly clear: "We will resolve it."

Mr. Baetz: Which exhibit are you reading?

Mr. Philip: November 5, 1980. It is going to be resolved. And: "Mr. Locke has been involved.... What I really wanted was a very simplified remedy whereby those houses would be treated just as though they had been bought and were under warranty. It would be exactly the same procedure because the commitment to fix was within the terms of the warranty." Then he says further on, "We want that impasse broken or we are going to say that the minister has a commitment from the HUDAC home warranties program that if this can't be resolved, it will resolve it."

That is as clear a policy statement as you could possibly ask for. He was saying that home owners are not going to be responsible; the government is taking on the commitment of being responsible for this.

Mr. Bell: I would like to focus the discussion on a matter of policy, and I would like Mr. Simpson and Mr. Lewis to stop the push and pull about whether it is a commitment, whether you guys got the minister off the hook with the owners and he subsequently put himself back on.

Can we go for a moment to matters of principle? I do not think you are at issue with the Ombudsman when he says the minister did on occasion make a commitment or a promise to the owners that defects would be repaired at no cost to the owners. Can we agree on that?

Mr. Simpson: We are not at issue on that.

Mr. Bell: Assume for the moment that those promises were

made; they certainly were made in October 1979. Whether they were again made in 1980, we can all decide for ourselves. Can you explain to the committee, if a minister makes a promise in that way which turns out not to be based in fact but nevertheless the promise is made, why should the minister and the ministry not be required to make good on that promise?

Mr. Lewis: My feeling is that the statements were made in good faith. That was said earlier by Bob Simpson. When you have a ministry of our type, which is part consumer and commercial relations and which handles complaints of a very broad nature, this committee has to be aware of the fact that we do not have jurisdiction over everything in the sense of specific statutes, yet people do bring to us many problems, many complaints, which are frequently worthy of consideration and action.

If we undertake something in good faith by way of offering our good offices or whatever vehicle it may be, if we act in accordance with those good offices, there are going to be times when we succeed and bring about a good result for the people we are assisting. There are, naturally, going to be times when we do not succeed.

If the committee were to take a position that we as a ministry undertake a financial responsibility every time we extend a hand to those who require help, then you are almost saying to us, "Be very careful about putting your hand out to help because, in the absence of jurisdiction, you are likely to end up financially responsible."

Mr. Bell: Have you not just put your finger on it? The ordinary way a minister or ministry might be expected to respond when one person or a group comes with a problem is: "Leave it with us. We will see what we can do." In that case, I do not think anybody would expect the ministry to adhere to a doctrine of perfection or any other doctrine. If the ministry could not see what it could do and did not, there is not an obligation.

Do we not have a different situation here? Do we not have a situation where the minister on more than one occasion and in more than one forum, to more than one person, said categorically, "Those defects will be repaired at no expense to the owner"? I thought you told me you agreed that is what he had said.

That takes it out of the ordinary realm of offering to help people. It takes it into a realm of representing a commitment. Once that commitment is made, why should the minister not thereby bind the ministry to the obligation to effect those repairs?

3:30 p.m.

Mr. Lewis: From my point of view, if the statements were made in good faith, the fact that the arrangement could not be fulfilled as he had hoped was simply because, as we said in our formal statement, we gave an entitlement against the public purse. He may have said things he could or could not carry out, but the fact was he was doing it in what he believed to be good faith and with the expectation that results would be arrived at. I do not

think that constitutes, in law or in any other way, a binding obligation by nature.

Mr. Bell: We are not in the legal realm because the Ombudsman is not relying upon the document's detrimental reliance or promissory estoppel, as I understand it. We are into the area of moral and/or political commitments and obligations.

Again, what is wrong with sending a statement out there that if ministers hereafter, in any context with any ministry under any subject, undertake to assist, they had better be darned careful of what they put on the record in the way of advancing expectations. If you are categorical on the record, it may come back to bite you.

What is wrong with that?

Mr. Lewis: If you are asking me, I cannot answer politically but I can answer in terms of my own moral conscience. It suggests an increased offensive, conscious posture which will cause people not to offer their hand. It will not necessarily temper the statement so much as cause people to say: "Let us not get into this. We do not have direct jurisdiction. It is not our issue, so why should we take a chance?"

Mr. Philip: Do you think politicians would do that?

Mr. Bell: What is wrong with that?

Mr. Lewis: What is wrong with it? My view is that in many situations putting that hand out, even where there is no jurisdiction, has had good results. It would be a shame to see that ended.

Mr. Henderson: My supplementary is in terms of--

Mr. Chairman: I would like to remind you, Dr. Henderson, that you are too far from the microphone.

Mr. Philip: You are just used to people lying on the couch and talking to you.

Mr. Henderson: I do not have a microphone in front of me to keep an eye on the couch, as it were.

I will address my supplementary to the chairman. I will get better co-operation from him. It seems to me we can acknowledge that politicians, ministers and, for that matter, premiers make statements and commitments about which sometimes later on they have to say, "Look, I am awfully sorry but it just was not possible." Although I do not like that any more than Mr. Bell or anyone else does, it occurs.

The situation in this case is complicated a little by the fact that a judgement was made within the ministry, given what the minister had said, which was not to let the home owners know of the offer that had been made on the assumption that they would decline it or that it would in some way prejudice the negotiations going on. In other words, not only did the minister make the kinds

of commitments he made, but the home owners were denied an opportunity to consider and make a decision in response to the offer on the basis of what the minister had said.

If I have that wrong, please tell me. However, it seems something like that occurred and that takes it beyond the realm of a commitment that was not fulfilled.

Mr. Lewis: I am sorry. If you are addressing it to me, I cannot--

Mr. Polsinelli: Mr. Lewis, I found your answer to our counsel's question quite fascinating. I would like to address a further question to you.

If a member of the public cannot rely on a statement made by a minister of the crown on four separate occasions, a clear, unequivocal statement, then what type of government communication would you consider a member of the public could rely on?

Mr. Lewis: I do not think I can really reply to that, other than to say--I guess we might have said it several times before--we had a situation where we had a good result in hand, but that good result disappeared for causes which we believe could have been controlled, and an attempt was made throughout to keep the arrangement going or to resurrect the arrangement in good faith. In that sense, the home owners were no better off or worse off in September, let us say, than they were in July, or in October than they were in August.

An attempt was made, a communication was made in good faith, but I realize counsel says they were not dealing with detrimental reliance, but there was no detrimental reliance, and in our action there was nothing which caused people to change their lives. The homes, as we heard earlier, were sold and resold during this process. Life went on and we dealt with the committee.

Mr. Philip: People do move for reasons other than--

Mr. Lewis: It is a nice neighbourhood. It seems to be in fine shape. It is turning over reasonably well in real estate terms. I agree that people have their personal reasons, and live their own lives, but I do not think anyone was the poorer for our attempts.

Mr. Philip: Is there not a difference between making a statement in good faith once--when perhaps the deputy minister, Mr. Simpson, would say to the minister, "Look, you cannot make that kind of promise because we have no way of fulfilling it"--and making it four times? The minister made this promise four times.

Mr. Lewis: Mr. Simpson said before that the record is there, and I cannot account for anything beyond what I have been saying in the last few minutes.

Mr. Philip: It is possible for the minister to make a mistake once, to make the wrong promise, but this guy made it four times.

As my colleague the member for Yorkview (Mr. Polsinelli) said, what can the public judge as a policy statement if a minister of the crown makes a statement or promise four times? If you cannot believe it the first time, then you would think you could believe it the second time. If you cannot believe it the second time, then at least the third time; but this guy made it four times. You guys were standing by his side, presumably saying: "Hey, you cannot say that, Frank. We have absolutely no way of fulfilling that promise." But he was saying it anyway. Who does one believe? Who are the home owners to believe?

Mr. Lewis: The home owners knew, through this period, that we were working towards a deal and that we were working to resurrect a deal as the time flowed. First, it was towards a deal and then it was towards the resurrection of the deal. They knew where they stood.

Mr. Philip: The minister told them where they stood. That is where he told them where they stood.

Mr. Baetz: As a former minister, perhaps I am a little more worried here for this principle. I had better check back to see what I said in Hansard.

Mr. Philip: Did you ever make a statement in good faith that was wrong four times?

3:40 p.m.

Mr. Baetz: I must say I agree with Mr. Philip's comment about perhaps once is okay, or even twice, but not four times. There is a difference, but that is not what the statement by the Ombudsman says. I wonder how the press and the world would receive this. I will read it. "In my opinion, when a minister makes a clear, unconditional promise to take specified action to help a group of people in the field of his or her ministerial responsibilities, then he or she and the officials are bound to deliver on this promise." If not, you are going to be hauled up before the Ombudsman.

That is a mighty basic principle we are dealing with here. This is not to say that I feel a minister can make a public statement, and with it a promise, lightly; I think you must be very serious about it. But I am sure that if you were to look in the records of political parties of all stripes, you would find ministers, especially around election time, who have got carried away a little bit and might even have said it two or three times, but I do not think their officials--and this is what it says here--are then bound to deliver on the promise. I pity the poor officials, too.

Anyway, I think we are also dealing here with a mighty important principle, one we should think about a little more quite apart from the merits or otherwise of this case. It is an accepted fact that if a minister gets off base a bit and does make some kind of promise within his field of responsibilities that had not gone the route of Management Board or Policy and Priorities Board of Cabinet, his or her own government will try to follow up and in fact fulfil the promise, but not in every case.

You are the government now. If we followed this out, I think the bureaucrats would have a hell of a time. We would go through all the statements made by--of course, they were not ministers then, were they?

I think it is an important principle, though, and one we should not take lightly. Maybe we should even give some more time to it at a later date and outside this context.

Mr. Philip: Do you not think, though, there is a qualitative distinction between an election promise--you know: two trees for every tree--and a specific commitment in a specific instance and set of circumstances to a specific group of people, made not once but four times? Surely that is not the same as promising to introduce denticare within the next two years. That is a different kind of promise.

Here is a specific group of people. Is this not more analogous to a verbal contract than it is to a political promise?

Mr. Baetz: I agree there is a fundamental difference between the two, but I guess we get back to the kind of promises that were these unconditional promises. Sure, if you take excerpts of the minister's statements, there is no question that he was pretty clear about what he intended to do. But if you read the Hansard reports in their totality, you get the feeling there was a fight and an impasse all the way through the thing. The minister was determined to get his way--he never backed down on that--but they were all done. Those statements became stronger as the impasse grew bigger.

I have some problem in making the decision on the basis that these home owners were led down the garden path by some of these comments. I do not know, for instance, what kinds of press reports there were. I am sure most citizens do not read Hansard. I suspect in this case a lot of them read the press. Did the press play this thing up to say that the minister had promised the House these people would get full compensation? I do not know. I think it may be important for this case to see whether these people were unduly influenced, or influenced at all, by what they read in the press.

Mr. Poirier: I guess we will have to debate whether it is shooting from the hip or through the hip, really.

Mr. Chairman: I think we have had a very good discussion.

Mr. Hayes: I have one point. Let us disregard the minister's statements. The ministry and the people working for the minister agreed that these home owners have a legitimate complaint and they were working towards rectifying that injustice. Now it is turned around.

As I said earlier, it seems that this news media event really had a lot of influence on this and made some people back off, but at that time they did agree, not only the minister himself, but also Mr. Simpson. He indicated earlier they had a legitimate beef and also that the ministry had an obligation towards those home owners. I feel they still do have an

obligation, regardless of the people going to the news media or not.

Mr. Chairman: These two gentlemen, then Mr. Baetz.

Mr. Polsinelli: There is one issue that has not really been addressed. We noticed through the correspondence and the information we have in front of us that there was much litigation on this matter. I was wondering whether anyone here knows the results of that litigation and whether any, all or most of the complainants actually were able to recover any money through the courts.

Mr. Bell: I think I can assist there. In the material there is reference to at least one person who successfully recovered an amount of money--I believe it was \$36,000--from the builder in respect to defects.

Mr. Polsinelli: What about the balance of them? From 144 claims, how many actions were initiated and how many of them were satisfied?

Mr. Bell: Dr. Hill concluded in general terms the litigation was "unproductive." I cannot tell you right now where I read that, but I read it today in some of the material.

Ms. Bohnen: I am surprised to hear you say \$36,000. It was my recollection that there were recovery actions brought and settled before they went to court. Although the home owners recovered some money, they failed to recover enough to put themselves in the position they would like to be in with their houses.

There was a little bit of litigation and, obviously, it was not terribly productive in monetary terms.

Mr. Polsinelli: That is interesting, but obviously there was a contract between the builder and the purchasers of those homes. I am sure the solicitors who acted for the purchasers would have been fairly diligent in the closing and obtained some type of undertaking that completion would have been in a good and workmanlike manner. I would have thought the majority of the home owners would have a substantial case against the builder, particularly in the case of major structural defects. They would have been fairly successful through the court process.

In recommending the Ombudsman's recommendations to the Legislature, it is important to determine how many of these home owners were successful and what they were able to recoup through the court system so that we do not give them any sort of double compensation. That would be a very important factor in determining at least the amount of compensation each individual home owner would receive, according to the Ombudsman's recommendations.

Mr. Lewis: It might have slipped me, but I do not immediately recall the \$36,000.

Mr. Polsinelli: I recall reading something to that effect. I think it was through the Hansard notes some place.

Mr. Bell: The amount may be irrelevant. What is relevant is that somebody did recover from the builder, either by settlement or by judgement of the court.

Mr. Lewis: The only case I was aware of was one in which an individual sued for approximately \$12,000 and settled after a couple days for around the \$2,000 level.

Mr. Poirier: Yes, it is on December 13, 1978, page 6048, second column.

Mr. Bell: Let me tell you what I am reading from, December 1978, justice, page 6048, second column. There is a decision in 1971 that awarded damages to a family in the amount of \$36,000.

Mr. Poirier: This project or another project?

Mr. Bell: I don't know.

Mr. Poirier: You can't tell.

Mr. Bell: I can't tell.

Mr. Pierce: My question relates to the same thing, and that is on page 15 of the material that we were supplied. It makes reference to a letter from the Ministry of Consumer and Commercial Relations to the Ombudsman, that somebody had settled out of court. My question is, how much did they get? I guess that is the other case that we are talking about, the one--

Mr. Lewis: That is probably the case I referred to.

3:50 p.m.

Mr. Pierce: --of \$12,000 and they settled for \$2,000.

Mr. Lewis: Yes. I could be out \$1,000 or so either way, but it was \$12,000 and the settlement was around \$2,000.

Mr. Pierce: With that information, I am a little surprised that nobody really knows the figures. Would that information not be pertinent to the Ombudsman's office in determining the kind of compensation being sought by the home owners? Here is a case where this gentleman has decided to go out on his own and pay his own lawyer's fees and go to litigation and nobody seems to know how much money he was suing for or what he got and nobody seems to care.

Mr. Bell: It is not relevant for two reasons. (1) My understanding is that the 24 people who are still eligible have been screened through the home owners' association as having never recovered anything. (2) What your neighbour recovers for his damages is not relevant to what you are entitled to on yours since these homes and defects have to be considered each on its own merits. A guy might have a wall down in one but a minor crack in the next house. You do not pay on the basis of the worst or the least.

Mr. Simpson: Perhaps this can be confirmed by the Ombudsman's staff, but I would be very surprised if one of the 26 was not the president of the home owners' association, who is the individual who settled out of court for this sum of money, who is the complainant.

Ms. Bohnen: That is correct. He is--sorry.

Mr. Bell: What do you say about his case? Is he entitled to recover again?

Ms. Bohnen: No, he is not. He is entitled to anything in excess of the amount of the settlement, I believe.

Mr. Bell: Why?

Ms. Bohnen: On the same principle that we are debating this case.

Mr. Bell: If he directly recovered moneys from the owner in the context of a legal proceeding and agreed to accept that money "in full and final satisfaction," why is he entitled to come back to your office to get paid again?

I thought your office had long adopted a policy. It arose about eight years ago out of a consumer's case, where somebody had settled with the so-called wrongdoer and then came to you and tried to recover again. I remember Arthur Maloney saying quite categorically that he was not going to permit it. Why, in principle, should a person be allowed the second bite?

Ms. Bohnen: He is entitled to a different bite against a different party. In this case, he is entitled to make his complaint against the ministry in addition to pursuing his remedies against the builder. I can find it shortly. Mr. Drea addressed this question of the rights of litigants to recovery from the builder in one of these Hansard reports.

Mr. Bell: Yes. He said if you were not successful, come on back and I will help you anyway.

Ms. Bohnen: He said a little bit more than that and I will find it in a minute. I do not think there should be double recovery for the same damages, but let us not forget the 25 other people on this list.

Mr. Bell: No, we are not forgetting them. However, if there happens to be somebody who has already recovered moneys in respect to the identical things we are now complaining about--

Ms. Bohnen: Granted:

Mr. Bell: --and has agreed to accept those as full and final, it is inequitable to permit that person to get it again.

Ms. Bohnen: On the same money again, of course it is.

Mr. Chairman: Mr. Baetz, followed by Mr. Shymko, followed by Mr. Philip.

Mr. Shymko: It was Mr. Drea who mentioned in November, "You guys can figure out who is going to fix it because the minister is not." We are here to fix what is a genuine concern, although Mr. Baetz indicated the dangerous aspect of going after every political promise made by politicians, whatever their capacity, especially in the capacity of ministers. How many are there now--26 individuals?

Interjection: Or 25.

Mr. Shymko: They are victims and people have been victimized. Maybe some have recouped the emotional, psychological, mental and financial problems by the resales of their homes. Does the Ombudsman feel there is really no legal obligation on the part of the ministry to assist them, that it is mainly on a moral basis that he is making his recommendations?

Ms. Bohnen: That is correct. There is no legal liability on the part of the ministry.

Mr. Shymko: Okay. Is this recommendation, in which you stress the moral obligation of government, unique? In other words, legally a ministry or government is not really bound to take your advice, but you feel there is a moral obligation to resolve the case.

Dr. Hill: A strong moral reason, and I would like to speak to that in just a minute in my closing comments.

Mr. Shymko: Concerning this relationship of publicity and the fact that the media had become involved in a very major way at an important stage of the process of negotiation, do you feel that using the argument that publicity jeopardized resolving this problem is a cop-out?

Ms. Bohnen: We do not believe there is evidence that the publicity detrimentally affected the offer the builder was prepared to give. I say this for a couple of reasons. It was not until the inspection reports were completed and given to the developer some time during the summer of 1980 that the developer was in a position to make any kind of offer whatsoever. After that, the one and only offer we have is the offer to pay 80 per cent of the cost of certain repairs for certain home owners.

The HUDAC official who was involved in the case, the executive director and registrar, told us he believed that this was the only offer they were ever going to get from the developer, that it was a good offer and that it was not a watered-down offer because of adverse publicity. That, coupled with the fact that there had never been any goodwill by this stage between the developer and the home owners and that there had been a lot of publicity throughout, just convinces us that while the publicity might have been unpleasant for all concerned, it did not have any bearing on the outcome.

Mr. Shymko: Do you believe that if the home owners had been notified of the offer, this would have helped, since you state in your argumentation the unreasonable aspect of the actions

of the ministry in refusing to provide information on that offer to the owners. You feel this was a very unreasonable step.

Ms. Bohnen: We think they had the right to know before the offer expired and to be given a chance to take it or leave it.

Mr. Shymko: I agree with you.

The intent, I would imagine, is perhaps to wake up ministers as well as those in charge of delivering services to the public to a sense of responsibility behind statements that are made, especially if such statements or expectations or commitments are repeated.

Do you feel that in the moral aspect of your recommendations you are perhaps trying to give a little more weight to caution on the part of ministers to be very careful when they do deliver promises, that your intent is not to create a cloud of fear that one should not make any promises at all? If one sincerely promises that he will try to resolve a problem and if in the process of trying to resolve it he does not resolve it, then that is something we all do. I am sure you as the Ombudsman do it as well.

On the question of the sincerity of the minister in this case in really trying to resolve that issue by repeating it many times, did he do this sincerely and responsibly or did he do it with an element of insincerity and irresponsibility? Was there sincerity or irresponsibility, as far as you are concerned, or both?

4 p.m.

Dr. Hill: I will put it this way. First, this is what being an Ombudsman is all about, the whole question of making good on promises. I will have something to say about that in a minute.

The other thing I would like to say is that a number of you have mentioned that you knew Frank Drea and you knew how he would sometimes shoot from the hip and this and that. I have also known Frank Drea for 20 years. I think Frank Drea sincerely meant to do something for those home owners. I think when Frank Drea spoke, he wanted to do something for those home owners. I think that is the kind of person he is. I feel we are obligated to fulfil the thing he really intended to do. Somehow or other it got double-shuffled, kicked around or worked over. I am not impugning the reputation of my colleagues here, but if you ask me what I think Frank Drea meant, I think Frank Drea sincerely meant for that commitment he made to be honoured.

Mr. Shymko: The only problem I have is with that first point of your conclusions, namely, that it was unreasonable in your opinion that they did not document the commitment from HUDAC, which in my understanding was merely a four-minute conversation. Is that right, Mr. Simpson? Do you still feel it is reasonable that a four-minute conversation or exchange should be fully documented?

Ms. Bohnen: We felt that if it had been fully

documented, the fact there was no meeting of minds between the minister and HUDAC would have been clarified at that early stage.

Mr. Shymko: Whether it is a four-minute exchange or a five-hour deliberation, the principle here is that an exchange between a minister who made a commitment and that agency should be documented and registered in your opinion?

Ms. Bohnen: We think that, yes.

Dr. Hill: Especially in the case--

Mr. Shymko: Therefore, you do not accept the ministry's argument, I would imagine--I guess you do not--that it is unreasonable to expect the ministry to document commitments to HUDAC, as a commitment to the homeowners was clearly gratuitous. In other words, since this was not a legal obligation, because the matter had no legal implications, you do not register what is done because of a moral sense of alleviating a plight or out of sympathy or so on. Why is it right for the ministry that in matters that are not legal per se, one should register these things?

Ms. Bohnen: Because when you make statements which create a moral-political obligation, they ought to be taken seriously.

Mr. Shymko: The danger of accepting that premise is that there are many discussions that go on in very serious matters--and perhaps matters that are not important--which are not taped, are not documented and not registered. Very often one comes to these problems with excellent resolutions.

I just wanted to ask Mr. Simpson if there are any criteria or policies. The change is obviously with the administration, with the minister. Do you still maintain that on aspects of cases such as these, where there is no legal obligation whatsoever on the part of the government or ministry, there is no need to document them? Do you accept the moral aspect of it that it would have resolved or helped the issue had you had some commitment or something on paper?

Mr. Simpson: I think generally I have no problem at all with the idea that it is a good idea to write things down and have a mutual understanding of what is going to happen. What we tried to point out in this case and in our argument is that everything that was supposed to happen the way it was supposed to happen was put in train, was set into motion, quite appropriately, the way it was supposed to be and in the way we said we would do it. In fact, the commitment was well and truly under way. I suppose if something had happened earlier on, we might have had a chance to adjust that. But we do not disagree with the principle of writing things down as to what we are going to do.

Mr. Shymko: In retrospect, do you think informing the home owners of that agreement or the offer would have been the preferred approach, especially because of a deadline that was certainly mentioned?

Mr. Simpson: There is no question we faced in the fall, when the offer came in, as I pointed out, that there would have been only 52 houses. Everything we did after that to try to resurrect it was an uphill battle. It would be tempting to look at it in hindsight and think that would have been the time to say, "Look, folks, that is it." That was one option when you look back and say it could have been considered.

Mr. Shymko: What prevented your giving them a report of the inspections?

Mr. Simpson: We never got to the stage of giving a program.

Mr. Shymko: Why was that?

Mr. Simpson: If they got the inspections back now, they are a hotchpotch, actually a pot-pourri of things written down, everything in the house. What we intended to give them was the inspection and a report saying: "This is valid. That is not. This is maintenance."

Mr. Shymko: You had that information, did you not?

Mr. Simpson: We had the list of things that were alleged to be wrong. It never got to the stage of going through point by point as: "Right, wrong, yes, no, we will do this, we will not do that." Had this matured, what they would have gotten ultimately was a piece of paper that said: "Of everything you listed, this we will do; this we will not. This is maintenance. This does not relate to original construction. You should paint this yourself," and so forth.

Mr. Shymko: Had there been no deadline and so on and another additional six or whatever months, would you have had that report completed and given that information?

Mr. Simpson: There is no reason to withhold any of that. However, as we said earlier, if you finish the thing and put it all together, you send it to everyone at the same time with a complete list and say, "Here is what you are getting."

Mr. Shymko: I find it very difficult to accept that HUDAC was not informed of the statements made by the minister in October. All these copies from Hansard--I am sure some of that information goes to the agencies involved. When standing committees meet and the name of an agency is mentioned, is it not normal that the chairman of HUDAC gets a copy, as in the case of the Workers' Compensation Board or whoever, especially when the minister makes these statements?

Mr. Simpson: I do not think we suggested they did not. We just could not confirm that we had transmitted it by way of a letter or something. They obviously knew, because they put that program in place, as we said they would.

Mr. Shymko: I find it surprising that the chairman of HUDAC would state that he was not aware, that he was misled by

that four-minute conversation with you. That you were dealing with homes that were built six or seven years ago is fundamental to the whole case. In the letter from the chairman, I find it difficult to accept his statement, quoted on page 46, "Mr. Drea was talking about one thing, we were talking about another."

Mr. Simpson: As Mr. Lewis points out, I do not think Hansard went into much detail about how many houses, where and stuff such as that.

Mr. Bell: Mr. Shymko, I do not think anybody in this room debates the issue of whether HUDAC was aware of what the minister said on the record through 1979 and 1980. I think you can take judicial notice that HUDAC was aware concurrent with the statements being made. I thought very early today that issue had been resolved.

Mr. Shymko: When the chairman of HUDAC says, "We were not aware of the several years' interval between the construction of the homes and the discussion held with you," do you feel that statement is not true?

Mr. Bell: With respect to what the chairman said, I do not think that goes to the issue we have just been addressing. The issue is whether HUDAC was aware on or about October 12 or 10, 1979, of Mr. Drea's statements. I do not think anybody in this room debates that. Whether it was aware of certain specifics is another matter that probably is not relevant to what you have to decide.

Mr. Shymko: Thank you.

4:10 p.m.

Mr. Poirier: It seems ironic. As a consumer advocate, I remember all the advice we get from the Ministry of Consumer and Commercial Relations: to do business wisely. Looking at it with hindsight, the ministry and minister might wish they had done business the way they advise consumers to do it, to get things down on paper and get the study from the very beginning. It is unfortunate, considering all the good will and hard work that was put in.

Hindsight is 20-20 vision, but the little leaflets give the advice to us to be very good consumers and get it down in writing. We have lots of material in writing here and there is the integrity of a ministry that advises us to be very good consumers, but in a certain sense it got caught in its own preaching on this, if I may say so.

Mr. Bell: Mr. Simpson and Mr. Lewis, I do not know how there could be, but is there anything you would like to add before we wrap it up?

Mr. Simpson: I want to add a modest numerical thing; it is very minor. When you are in your deliberations, the recommendation carefully says--there has been reference to 26, and it is not 26; it is potentially 109. I do not know what is out

there. There are 109 home owners still there who own houses and who filed deficiency lists in 1980. Of the 26 we have, by going back through the lists we have discovered there are three on there who were not on the original HUDAC list. The numbers are not easy.

Mr. Bell: It is not as easy as 24.

Mr. Simpson: It is not as easy as 24. I would caution too that the major or substantial problem issue is not easy either.

Mr. Baetz: We are directing questions to both here at the present time. When did the Ombudsman's office and the ministry agree to disagree on this issue?

Ms. Bohnen: Which issue?

Mr. Baetz: On bringing this to this committee; approximately.

Mr. Bell: August 1984.

Mr. Baetz: In August 1984 you agreed to disagree and that you were going to come here. Since then, is there no possibility of going back? After all--I must say this with great regret--there is a change in government and a change in minister. Have you gone back to the new minister and presented this case?

Ms. Bohnen: Yes.

Mr. Baetz: You did. What was the answer? The ministry still disagrees?

Ms. Bohnen: Yes.

Mr. Baetz: I wondered what the timetable here was, whether you had decided a year ago to come here and nothing further had been done.

Mr. Philip: Bob Simpson, you Liberals are all alike.

Mr. Bell: Mr. Lewis, Mr. Simpson, do not respond to that.

Can we take it that everything has been stated that could be stated? Dr. Hill, I know you have a closing remark, but something Mr. Baetz raised brought it home to the committee. The committee is not just going to address this particular issue and the merits. Your opening statement puts the proposition it will be deciding. Your language is, "when a minister makes a clear, unconditional promise to take specified action in a field within his responsibilities, then he and his officials are bound to deliver on that promise." I take it you are not confining that statement of principle just to this case, but to any other case.

Dr. Hill: Right. That is what the whole work of an Ombudsman is about.

Mr. Bell: I will give you the opportunity of saying this

is an unfair question, but if a minister of the crown makes an unconditional promise to take specified action to help a group of people, and specifically to provide funding for separate school education in this province, and if the court decides that is subsequently ultra vires, are you still of the view that he and his officials are bound to deliver on that promise?

Mr. Polsinelli: I do not think it is a fair question.

Mr. Bell: Can I put it this way then--

Interjections.

Mr. Bell: How categorical are you, Dr. Hill, in stating that whenever a minister makes a promise to do something to help people, he and his officials are bound?

Ms. Bohnen: Can I step in here for a moment? To start, implicit in Dr. Hill's statement is the caveat that we are not talking about legislative action, which is subject to a whole bunch of uncertainties, but about specific administrative action, something within the capability of his ministry to achieve.

Mr. Philip: It is a contractual agreement.

Ms. Bohnen: We are excluding from this realm the kind of political promises some members of this committee were alluding to earlier, made during election campaigns, to legislate this or to legislate that. We are not speaking about that.

Mr. Shymko: But this promise may be political. How do you define what is political?

Ms. Bohnen: But it was not a legislative promise.

Dr. Hill: It was sincerely given.

Mr. Polsinelli: We are not dealing with a particular situation, a particular promise made by a particular minister. If from the decision we make, we can extrapolate a larger principle, that is good. I do not think we should try to extrapolate a larger principle before we decide this situation and what we should do with this situation.

Ms. Bohnen: We have tried to clarify any questions or points of confusion that members have raised. On hearing the ministry's position, I get a sense that it is arguing a different case. The case the ministry is arguing today is that it did its best to negotiate in good faith a favourable deal from the developer towards the home owners. We do not dispute that. That is not the issue for us. The issue for us flows from unequivocal, unconditional statements made by the minister which were not in regard to negotiating a deal.

Mr. Baetz raised the question of whether his statements were even communicated to the home owners. Apart from the fact that these people were very much politically attuned, I do have clippings from the Globe and Mail and the Toronto Star recounting

his statements in the Legislature and in committee. We can take it that his statements were made known to these complainants.

We said the publicity had no bearing on the outcome of the case, and we adhere to that position. The information we get from the program just does not go to prove that, but for adverse publicity generated by the complainants, a much better deal would have been achieved.

As for the number of complainants now entitled to something, should your committee endorse the Ombudsman's recommendation, we also have gone through the list of 26; our files also did not disclose statements of defects for three of those home owners. At this stage I do not know whether that is because they never filed deficiency statements; I am not sure what Mr. Simpson means when he says that they were not on the HUDAC list. I cannot believe that refining that list down to named individuals and certain amounts of money is an insuperable task. That is all I wanted to say.

Dr. Hill: I have a brief closing statement. Linda Bohnen has scooped some of the points. I have a few additional points I can make very quickly.

I have heard what Mr. Simpson and Mr. Lewis have said today on behalf of the Ministry of Consumer and Commercial Relations. I do not doubt for a moment that they personally used their very best efforts to negotiate a good deal with the builder. I disagree with them about why the builder's offer was ultimately unacceptable, but I shall not dwell on that issue because I do not think it is a critical or crucial one.

The basic principle is clear. It is simply that in our system of government, people are entitled to expect delivery on a minister's clear, unconditional promises--promises that were made at least four times. Basically, this is what the work of an Ombudsman is all about, protecting people. That is why I have been put here: to protect people from broken promises.

I understand the difficult situation in which ministry officials may find themselves, but when you push all the underbrush aside, you cannot override the ministry's responsibility to make good the minister's word. The citizens of Ontario should expect no less. Indeed, for the most part, a house, a home, is the greatest single investment any individual or family makes, in a lifetime; it is the largest single investment. They have a right to expect that the word of a minister will be kept in respect to that kind of investment.

Practical problems in implementing my recommendations have been raised. I feel certain that if your committee endorses my recommendation, the ministry is capable and, I am sure, will achieve a fair result. It would be wrong, in my view, to back away from trying to achieve a reasonably good result only because perfect justice can no longer be had.

The committee continued in camera at 4:21 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
THURSDAY, SEPTEMBER 5, 1985
Morning sitting



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Bohnen, L. S., Director, Investigations
Hill, Dr. D. G., Ombudsman

Blair, W. L., Chairman, Liquor Licence Board of Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, September 5, 1985

The committee met at 10:05 a.m. in room 151.

ANNUAL REPORT, 1984-85
(continued)

Mr. Chairman: Ladies and gentlemen, I understand when the chairman sees a quorum, there is a quorum. We will now start our meeting and I will call on our counsel Mr. Bell.

Mr. Bell: Thank you, Mr. Chairman. Before we deal with the recommendation-denied case involving the Liquor Licence Board of Ontario, and you see that the chairman and some of his associates are before you today, just for the record I would like to announce in respect of the committee's deliberations in camera yesterday regarding case summary 1, that the committee has made a decision on that case in principle.

It is not prepared at this time to announce what that decision is, nor the specifics of its recommendations which flow from that decision. It is enough to say that the committee still has some practical issues to address before finalizing the matter. I am sure that is tantalizing for you, but I cannot go any further and nobody should take what I have said to be an indication of whether it went aye or nay. I would ask anybody who believes he has the right answer not to give your opinions to anybody who may act upon it to their detrimental reliance.

Mr. Shymko: Even I am confused, John.

Mr. Bell: Good, I am glad. That means nobody can hold it against us later.

If you would turn to your second volume, particularly case 3 in your material, I have already indicated to you that Mr. Willis Blair, chairman of the Liquor Licence Board of Ontario is before you. Welcome this morning, sir.

For the record, please introduce your colleagues.

Mr. Blair: On my left is Mr. Steven Grannum, the solicitor for the board. On my right is Mr. Paul Boukouris, who is currently the director of policy and research, who had the position of acting director of inspections during the time of the incident we are going to deal with today.

Mr. Bell: All right. Thank you, sir. As per the format of yesterday, we will be asking Dr. Hill and Ms. Bohnen to address you on the circumstances of the complaint, the matters they investigated, the findings, conclusions and recommendations.

I can say this because I was the biggest offender yesterday.

Yesterday was an important day for a lot of reasons. It was the first recommendation-denied case that you got under your belt, and I think it went extremely well. Because we have some time constraints today that did not exist yesterday, specifically the Workers' Compensation Board scheduled for 2 p.m., we should endeavour to complete this totally this morning. That is going to require that people like myself bite our tongues until our turn and permit Dr. Hill, Ms. Bohnen and Dr. Blair and his associates to complete their submissions.

As a result of some scheduling conflicts, we are going to have to rise at 12:10 or 12:15 and return at 2. If we are not completed this morning, Mr. Blair, you and your associates will have to return at two o'clock, and we will finish it then with whatever time is required.

With that introduction, Dr. Hill, would you begin and when you are doing so, would you assist the committee in identifying the documentation you are going to be referring to in the material.

10:10 a.m.

Dr. Hill: Thank you, Mr. Bell. Mr. Chairman, members of the standing committee, I am going to make a brief, two-minute opening statement and then turn to Linda Bohnen to explain the case from our position and to present the material.

Public servants aggrieved by how they have been treated by the government as employer have the right to complain to the Ombudsman. In this case, a liquor licence inspector with some seven years' seniority complained that he had been pressured into resigning his position with the Liquor Licence Board of Ontario. Our investigation looked at the discipline procedures followed by the board and at the complainant's conduct leading up to the termination of his employment.

I concluded that the complainant had in effect been dismissed, since he had been pressured into resigning. I concluded that while some discipline was warranted, the board did not have sufficient cause to dismiss him. I therefore recommended that the board pay the complainant a sum of money to compensate him for wrongful dismissal. I also concluded that the board did not use proper procedures in deciding to dismiss the complainant and that the civil liberties of the complainant, irrespective of what he might have done, might indeed have been abrogated.

During the investigation, we learned that the board now adheres strictly to the Ontario Manual of Administration with respect to employee discipline, so I made no recommendation about these procedural issues.

It is my impression that people sometimes look askance at the Ombudsman when he is involved in public service employment complaints. Some people seem to think that since public servants have grievance rights under their collective agreements or under the Public Service Act, it is somehow excessive or wrong for them to complain to the Ombudsman.

This is not the time to debate an issue of jurisdiction. It is enough for me that the Ombudsman does have jurisdiction over this kind of complaint. It is my responsibility to consider them with the same sympathetic objectivity as I try to bring to other kinds of complaints. In this case I could not say the complainant's conduct was blameless, but I do say that he had every right to be treated fairly and evenhandedly.

Ms. Bohnen: Mr. Chairman, I will be referring to the facts of the case, and while I do not intend at this point to read from any particular document, it might be best if you refer to the synopsis, which is in your materials at tab 3.

The Ombudsman's conclusions and recommendations in the case are based on certain findings of fact made by him. Some of these findings of fact are disputed by the liquor licence board, but I hope to set out for you the investigative underpinnings of these findings of fact so you will be persuaded that the Ombudsman's findings, and hence his conclusions, are well-founded.

After the Ombudsman made his findings of fact in this case, it was his task to apply his judgement of what was fair and reasonable in the circumstances of the case. I intend to review briefly this process of application of Ombudsman judgement to the facts of the case.

First, it is worth disposing of a couple of matters. You will have noticed that although the complainant's employment with the board ended on June 26, 1979, he did not complain to the Ombudsman until September 16, 1982, some three and a half years later. I think it is natural to ask why the complainant, Mr. L, delayed so long in making his complaint. The board has advanced his delay as one reason not to accept his claim that he was pressured to resign.

Mr. L's explanation for the delay is that after his employment with the board came to an end, he tried to find another job in a hospitality or beverage industry. He said that only after a couple of years did he learn that prospective employers, who were contacting the board for reference, were being told he suffered from a mysterious heart condition. He felt this had ruined his chances of obtaining comparable employment in that industry.

He also learned from news accounts that other board officials who had been charged, and indeed in one case convicted on benefits charges and fraud charges around the same time his troubles began, had ultimately been reinstated by the board. He appealed for a hearing of his case by the chairman of the board and was turned down. He then approached this office.

I hope that explains to you his thinking in his delay in coming to the Ombudsman with his complaint. This is another matter to dispose of, I hope.

Much of his complaint concerns the proper discipline procedures the board ought to have followed. We were informed during our investigation that, at the time in question, the board

had voluntarily committed itself to following the procedures set out in the Manual of Administration for bargaining unit as well as management class employees. The manual sets out the procedures to be followed by a ministry or agency before a decision is made to dismiss the employee.

This complainant was a bargaining unit employee of the board so that his rights to grieve dismissal were set out in the collective agreement. It is important to keep in mind the distinction between procedural fairness before a decision is made to dismiss, and rights to grieve after a decision is made to dismiss. In this case, only the former are relevant; the procedures used before the decision is made to dismiss.

Yet he did not grieve under the collective agreement because technically he had indeed resigned. His right to bring a grievance was time-limited and had long expired before he approached the Ombudsman, so that this office could not have referred him to his rights to grieve under the collective agreement and turned away his complaint.

Now I intend to turn to the facts of the case, which I think are pretty clearly set out on pages 1 and 2 of the synopsis.

As you will have read, the events were set in motion when two liquor licence board inspectors obtained a signed statement from the holder of a liquor licence, a restaurateur, alleging that Mr. L frequently ate lunch at his restaurant and did not offer to pay. This led to further investigation on the part of liquor licence investigators. That led to the creation of an investigative report outlining their findings. No action was taken on that report for 10 months, or at least on the statement from the restaurateur for 10 months.

We understand that the board's explanation for the delay in acting on the information was due to internal problems within the board. The report was not acted on by the director of inspections at the time of the event but was activated by the subsequent acting director of investigations, who is sitting to my left at this table.

In any event, about 10 months after the statement was obtained, Mr. L was asked to attend an investigative hearing set for 2 p.m. the next day. The notice stated that the hearing was "with regard to your work habits as liquor inspector," and he was advised that the topics to be covered would include, "expense accounts, daily activity reports, meals and number of calls per establishment." The notice was absolutely silent on the allegation of acceptance of benefits or courtesy from any licensee. Mr. L was informed that if he wished, he might be accompanied by a member of his union at the hearing.

10:20 a.m.

The Manual of Administration requires that a hearing be held where a deputy minister believes there may be cause for dismissal. The manual requires reasonable notice of the hearing to be given, and states that as a general rule this should be more than 48

hours. The manual states, "It is essential in all cases that a hearing be held at the earliest possible date following the incident which gives rise to the hearing," and provides "that the notice shall include 'reasonable information of any allegations with respect to the conduct of the public servant.'"

It is evident that Mr. L's hearing was not at the earliest possible date. The board, after waiting as long as it did to use the licensee's statement and to act on the other evidence incriminating to Mr. L, then gave him less than 24 hours' notice of the hearing and gave him absolutely no notice that acceptance of courtesy had been alleged against him.

What was said at the hearing is in dispute in a couple of respects. The complainant alleges that at the hearing the then acting director of inspections, who was serving as chairman of this investigative hearing--in your material he is referred to as Mr. A--threatened to communicate to the police the board's information that he accepted courtesy. There is no question that at the time of the hearing various other liquor licence board employees were facing criminal charges on allegations of taking benefits in Toronto and Ottawa. Mr. A denied making this threat at the hearing. A union representative who attended the hearing said there was no mention of charges being laid against him.

Another liquor licence board employee, who is referred to as Mr. D in your material, and who was present for his own investigative hearing right after that of Mr. L, said that just as he entered the office for his hearing, he heard Mr. A. tell the complainant that if he did not leave quietly he would turn the information over to the Mississauga police. The union president, who was also at the hearing, does not remember Mr. A threatening Mr. L.

The then personnel manager for the board--Mr. E in your material--denies there was any threat at that hearing of turning over anything to the police. However, he said that subsequently, after the board had decided to dismiss Mr. L, he told him that if he did not resign, he would likely face criminal charges.

You can see that there is some conflicting evidence as to whether or not the chairman of the investigative hearing made a threat to turn information over to the police, but that it is admitted by the personnel manager that he told Mr. L. that if he did not resign, information would be turned over to the police.

The Ombudsman's conclusion from this mass of evidence was that Mr. L resigned under pressure. He took into account the fact that several other board employees, including, and this is noteworthy, several of the complainant's superiors, were facing criminal charges for similar allegations at the same time, and that the personnel manager himself admitted that he warned the man the information would be turned over to the police.

The only conclusion he drew as to whether a threat had been made at the investigative hearing was that the evidence was inconclusive on that.

I will explain in a moment how this conclusion that Mr. L. resigned under pressure led to the conclusion that he had been dismissed, but I would like to return to the procedures used by the board before I get to that.

The complainant was then suspended with pay right after the investigative hearing on June 27. He was notified by letter that a discipline committee meeting would be held on July 3. I do not have a calendar for the year in question in front of me, but that is clearly only a few working days, taking into account the Canada Day holiday.

He met with his lawyer on July 3 and the lawyer asked for a postponement of the discipline committee meeting to enable him to prepare submissions on the complainant's behalf. There was no possibility of his being given an opportunity or the complainant being given an opportunity to appear in person to examine Mr. L's accusers. That is notwithstanding the fact that the Manual of Administration contemplates that very kind of hearing with full examination and cross-examination.

In any event, the lawyer's request for a delay was rejected and the committee met on July 6. It reviewed the results of the investigative hearing and recommended that the complainant be dismissed. It communicated its reasons to the chairman of the board but not to the complainant or to his counsel. At that stage, neither the complainant nor his counsel had the discipline committee's reasons for recommending dismissal to the board.

Mr. L's lawyer renewed his efforts to appear in person on the complainant's behalf and was finally granted the right to make written submissions to the board. The board met to consider the complainant's case on July 23 and agreed with the discipline committee's recommendation of dismissal. The board's then personnel director was assigned the task of contacting the complainant to discuss resignation and, as a result, Mr. L decided to resign. He accepted about two months' salary and bought his board-leased car at wholesale value.

Mr. Bell: I am breaking my oath. You say he accepted. Was there any exchange of documentation?

Ms. Bohnen: No, there was not.

Mr. Bell: No release?

Ms. Bohnen: No release.

As you know, it is the board's position that Mr. L resigned of his own free will and no decision was made by the board to dismiss him. With respect to the argument that no decision was made to dismiss him, we cannot agree. The record is clear that the discipline committee recommended dismissal and the board decided on dismissal. It is also clear that the board decided as well that his resignation should be solicited. Resignation would, of course, have made formal dismissal unnecessary and would foreclose a grievance based on dismissal.

The argument that he resigned voluntarily is based on the view that Mr. L was not under duress to resign. I have earlier explained to you why the Ombudsman found otherwise. He felt the fear of the board turning over an incriminating statement about him to the police induced him to resign, bearing in mind the climate at the time of these events.

There is a body of common law dealing with the issue of when a resignation has been so induced by pressure or threat on the employee that it cannot be said the employee intended to resign of his own free will. Suffice it to say that each case must be decided on its own set of facts, just as the Ombudsman made a finding of fact here.

In such cases of induced resignation, or to use the technical term "constructive dismissal," the question automatically arising is whether the employer had grounds to dismiss the employee. If the employer did have cause, then the employee was not entitled to any notice or compensation in any event. Therefore, we had to examine whether Mr. L's conduct indeed warranted dismissal.

10:30 a.m.

As you have read from the material, the board based its decision to dismiss on falsification of expense accounts; excessive inspection of the premises closest to the man's own home; conducting spot inspections with another inspector without prior approval from his supervisor; and, lastly, accepting benefits from a restaurateur.

The key factor, without doubt, was the charge of accepting benefits. I say that for a couple of reasons. The main reason is that Mr. D, the co-inspector who was disciplined at the same time as Mr. L, received a 90-day suspension for essentially the same infraction, except that he was not charged with having accepted benefits. He is charged with everything the same as Mr. L is, namely, conducting fraud inspections with another inspector; too many inspections close to home; and falsification of expense accounts. These are essentially the same charges except there is no allegation he took benefits. He has his own investigative hearing and the penalty ultimately imposed on him by the discipline committee was 90 days' suspension.

Mr. Bell: Without pay?

Ms. Bohnen: Without pay.

The other reason we suggest the benefits charge was the real reason for the dismissal was that the other infractions would not likely have warranted dismissal in any event because, first and foremost, he had received no previous warnings, reprimands or discipline on any of these infractions prior to this. Much of the evidence used to substantiate these charges of excessive inspections, etc., were drawn from the man's own records submitted to his supervisor.

One would have expected that if this behaviour, which had gone on for some time and was reported to his supervisor, caused the board some problems, he would have received discipline prior to this point. Those charges alone--and there is some problem with the evidence substantiating them as well--would not have warranted dismissal. Some discipline perhaps, but not dismissal. It is clearly the benefits charge that caused the board to seek termination of his employment.

That leads us to the critical question, was the charge of accepting benefits sufficient grounds for dismissal in the case? At his investigative hearing and throughout the proceedings, Mr. L's answer to the charge was this: He admitted he ate food at the restaurant without paying. He said he was offered meals and was not asked to pay for them. He said he did not think there was anything wrong in that because everybody was doing it at the same time he was.

All of us find it difficult to grapple with this kind of charge and these kinds of excuses, but we have to go through the evidence obtained during the investigation to get to the bottom of this complaint.

There are a few problems with dismissing him based on the statement obtained from the restaurateur. First of all, there was a 10-month delay in acting on his statement. That gives rise to the inference that the behaviour had been condoned by the board. If it was so unacceptable that it warranted dismissing the man, why would this statement be sat on for 10 months?

Secondly--and here the Ombudsman made a finding of facts disputed by the board--the acceptance of courtesy or benefit was a prevalent practice among board officials at the time. It would be unfair to invoke the most severe sanction of dismissal for conduct generally condoned at the time. No one wants to air past dirty laundry involving some--certainly not all--board officials at the time. That is not our intention. But we have to discuss why the Ombudsman came to the conclusion that acceptance of courtesy was condoned by the board at the time.

We based our finding on information obtained from other current and former inspectors, including a board supervisor. From the reaction of the union and the board to criminal charges, which were highly publicized at the time, and from--

Mr. Philip: Whom were those charges against?

Ms. Bohnen: Against board supervisors and inspectors in both Toronto and Ottawa who were charged with fraud in respects irrelevant to this and with taking benefits.

The matter was also aired before the Crown Employees' Grievance Settlement Board in relation to an arbitration involving one of these other board officials, who was charged with, among other things, accepting benefits and suspended without pay.

Mr. Shymko: Mr. Chairman, I have a problem here. I am somewhat confused by the mention of a common practice of accepting courtesy and at the same time a series of charges of fraud being laid against people who were accepting courtesy. Is it at the same that--

Ms. Bohnen: They were charged and their defence really arose, not in connection with the criminal proceedings, but when they grieved their suspension. They said it was not grounds for suspending them because everybody had been doing it at the time that they were caught doing it.

Mr. Shymko: Were there people charged who were accepting courtesy at the same time?

Ms. Bohnen: There were several people charged with accepting courtesy at the same time as this man.

Mr. Chairman: Can we conclude the discussion?

Mr. Shymko: Okay, fine.

Ms. Bohnen: Okay. I am just dealing with the question of the evidence as to whether or not this was a prevalent practice.

This is from a grievance board decision dealing with one of these other inspectors who was suspended without pay for, among other things, taking benefits. The decision of the board says that a union official testified regarding board policy and practice regarding both acceptance of benefits and the form 220. That relates to the fraud.

At a board informational seminar held at the Harbour Castle Hotel some time prior to the laying of the charges against this man and others, Mr. Cooper, executive director of the board, apparently advised those present that accepting a meal of whisky at licensed premises was acceptable. Eber Rice, chairman of the board, was also apparently asked about the same issue. He told those present that if an inspector in the company of a hotel operator were offered dinner or a coffee, it would be acceptable to take it. The union officials said that this was the situation up until the charges were laid, but the board now would not let its employees accept this type of courtesy from an operator.

The charges referred to here were about six months after the statement obtained from the restaurateur in our complainant's case. This grievance board concluded that it is difficult to see how a board with such ambiguous policy directives to its inspectors can complain that its operations would be seriously prejudiced by retaining them in employment pending disposition of the charges.

Taking into account all of this information, Dr. Hill came to the conclusion that it was reasonable to believe that acceptance of a free meal--that is what we are talking about--was practised among many board officials at the time, that it had been condoned by the board and that it therefore would not warrant dismissal.

The finding that Mr. L was constructively dismissed without cause led directly to the recommendation that Mr. L ought to be properly compensated for having his employment terminated without proper notice. Taking into account the facts of the case, the man's age, prospects of re-employment, common law, etc., many things, the Ombudsman concluded that he ought to have been paid a year's salary.

We know he was paid something. From the one year's salary we deducted the value of the compensation package already paid to the man--the benefit to him of being able to buy the car at wholesale value, the two months' wages, his pension benefits and so on. Going through this exercise, we ultimately came to a figure, which I think you will find at the back of your reports. The total compensation due, according to our calculation, is \$8,678.

10:40 a.m.

We added interest to that in the recommendation, using the calculation method set out in the Judicature Act, and came up with a total figure slightly in excess of \$15,000.

Mr. Bell: That is on page 51 and 52 of your material if you want to follow it.

Ms. Bohnen: I should mention, at the top of page 45, we also deducted from the 12 months' compensation two months' severance received, the value of the board vehicle, 90 days' salary--which we think would have been a suitable penalty and the same as the other instructor received--and pension payments received. That is how we arrived at that figure and then added on interest.

I intend really to stop there and respond to the board's position after they have had a chance to advance it, but I can answer any questions, of course, as can Dr. Hill.

Mr. Bell: Can I enlighten board members that committee members can ask what they wish? With respect to the three and a half year delay in the complaint, I do not fully understand what you meant by "heart condition." Did he learn from sources that the board was communicating or representing that he suffered from a heart condition?

Ms. Bohnen: Yes.

Mr. Bell: I presume that would be when people request references from the board.

Ms. Bohnen: Yes.

Mr. Bell: Do I take it that as late as two years after employment ceased he had not yet found other employment? The question is, did he obtain employment subsequently and, if so, when? The reason I ask that is you know it materially affects any damages to which a person is entitled, for example, if he got a job a month after.

Ms. Bohnen: He did not.

Mr. Bell: If he got a job within 12 months, there has to be some further discounting.

Ms. Bohnen: Can I refresh my memory on that point and respond a little later?

Mr. Bell: All right. With respect to the submissions the lawyer made to the board, let me go back and just test the chronology. I think it is important for the committee members to understand that. The process leading to the termination of somebody's employment within the Liquor Licence Board of Ontario is similar to that in a number of public bodies. At the administrative or managerial levels, there are certain vehicles to determine allegations of misconduct, and in this case it is the investigative hearing.

Ms. Bohnen: Yes.

Mr. Bell: May we take it that is the first level of the process leading to a decision whether or not to terminate?

Ms. Bohnen: Yes.

Mr. Bell: Are you saying there is a requirement anywhere that a person is to be given a minimum notice of that hearing and an opportunity of knowing in advance what is going to be discussed?

Ms. Bohnen: Any agency bound to follow the Manual of Administration or purporting to do so is required to give that notice, yes.

Mr. Bell: It goes from the investigative hearing to the discipline committee.

Ms. Bohnen: Yes.

Mr. Bell: That is an internal committee of the board designed, I take it, to hear allegations of misconduct and determine whether they are so and, if so, to recommend certain dispositions to the board.

Ms. Bohnen: Here it is a bit of a misnomer because it conducted no hearing in this case. The complainant was not present. I would say it conducts a review.

Mr. Bell: You have to look at its function, I think, which is to receive the investigative report and do something with it for the purpose of recommending to the board what steps should be taken. Was it at that hearing that you found the complainant, with his lawyer, was denied an adjournment of a so-called hearing on notice of less than seven days?

Ms. Bohnen: He asked for an adjournment to enable him to make submissions to that tribunal, yes.

Mr. Bell: However, the hearing was set that day on notice of less than seven days.

Ms. Bohnen: I am objecting to your using the word "hearing," because it misconstrues what that committee does.

Mr. Bell: It is in your material.

Ms. Bohnen: It would be clearer if we used the word "review."

Mr. Bell: All right. So it was not a hearing.

Ms. Bohnen: That is right.

Mr. Bell: Whatever it was, that instrument issued a report to the board.

Ms. Bohnen: Yes.

Mr. Bell: And that is the report upon which the board acted.

Ms. Bohnen: Yes.

Mr. Bell: The lawyer made submissions to the board, which presumably were considered concurrently with the discipline committee's report.

Ms. Bohnen: Yes.

Mr. Bell: Were those submissions prepared and submitted by the lawyer with prior knowledge of the discipline committee's report?

Ms. Bohnen: He had received a copy of the inspection report. He received notice of the discipline committee's recommendation but not notice of its reasons for that recommendation.

Mr. Bell: So he did not have all the board had available to it when it made its decision.

Ms. Bohnen: That is correct.

Mr. Bell: Therefore, you say, he was not afforded the opportunity of making full and adequate submissions to the board.

Ms. Bohnen: Yes.

Mr. Bell: We have been throwing around words like "hearing," "review" and "Manual of Administration." I want to know the Ombudsman's position. Do you say this man was entitled as of law to a hearing, as we know it under the Statutory Powers Procedure Act, before a decision could be made to terminate or not to terminate?

Ms. Bohnen: I would like to answer it this way. There is

the grievance board decision to the effect that members of the bargaining unit, such as this man, are not entitled to a full-blown hearing as set out in the Manual of Administration, which is refining what is set out in the Public Service Act.

Interjection.

Ms. Bohnen: Let me finish, Mr. Bell, please.

However, during the investigation, we were informed by the then personnel manager that the board nevertheless attempted to follow those procedures. We also formed the view that, regardless of whether the board was required as a matter of law to give him a full-blown hearing, it was unfair to come to the decision it did without giving him a form of hearing.

Mr. Bell: All right. If he is not entitled in law to a hearing, is he entitled to some minimum fairness of procedures? You say he is. What did he not receive that, in law, he was entitled to?

Ms. Bohnen: In law or as a matter of natural justice?

Mr. Bell: I did not know there was a difference.

Ms. Bohnen: We feel he did not get adequate notice with regard to time. He got less than a day's notice that he had to show up for an investigative hearing.

Mr. Bell: My concern is to know what happened around the board's meeting to decide his fate. Others may disagree with me--including my clients--but I consider that to be the key process. What is it about the board's consideration of the matter, and the decision the board took, which led to the termination of his employment, by whatever means, that you say was not administratively fair?

Ms. Bohnen: There are several things. First and foremost, the board came to a conclusion based on evidence furnished to it which had never been tested orally. The authors of the allegations made against him were never questioned before any board officials, yet this was the primary evidence the board used to make its decision.

Mr. Bell: And you say that is a rule of administrative fairness?

Ms. Bohnen: Yes. That was unfair in this case.

Mr. Bell: That is a rule of administrative fairness, as you understand the rule?

Ms. Bohnen: As applied to the facts of this case, that is what we felt.

Mr. Bell: What else?

10:50 a.m.

Ms. Bohnen: Neither the man nor his counsel was permitted an opportunity to make oral representations. They were given an opportunity--one that was hard to come by, by the way--to make only written submissions, and those written submissions, while they were based on an inspection report, were based on no reasons. No reasons were ever given them to address by the discipline committee.

Mr. Bell: That is what we were talking about before. You say they did not have full access to all the material to which they were entitled before the board made its decision.

Ms. Bohnen: That is right.

Mr. Bell: Okay. The criminal charges.

Ms. Bohnen: Yes?

Mr. Bell: What was the disposition of those charges?

Ms. Bohnen: There were no criminal charges for this man. You do not mean that.

Mr. Bell: I know, but you rely in some way on--in any event, what was the disposition of those charges?

Ms. Bohnen: The man who was charged and from whose grievance board decision I read to you was convicted on the fraud charges. The benefits charges were dismissed, because it was found that there was no intent to give a benefit back to the offeror of the free meal. The court held that to sustain a charge of taking benefits under the Criminal Code, there had to have been an intent to do a favour back to the licensee, the restaurateur.

Mr. Bell: Is it your understanding that the reason the board reinstated those persons whose charges had been dismissed was the dismissal of the charges?

Ms. Bohnen: No. I think it reinstated them because of the grievance board decision ordering them reinstated.

Mr. Bell: All right. Fair comment.

Dr. Hill mentions in his report on a couple of occasions that the union and its representatives who attended with this individual at the various meetings and who were asked to assist him in the grievance procedure appeared not to have sympathy for or to support the person's position. Is that a correct assessment, and if so, why?

Ms. Bohnen: There is some conflict in the points of view of the different union representatives who were at the investigative hearing. It might be most accurate to say that they were not enthusiastic about advancing his case and taking a grievance, but that if he had indicated it was his wish to go that route, they would have supported him.

There are quotations from one union representative to the effect that they had him "cooked" and that it was to his advantage

to resign. Other union representatives say they did not feel it was their place to give any advice. That is why I think they were willing but not enthusiastically supportive.

Mr. Bell: All right. You cite the delay between October 1978, when the statement from the licence holder was obtained, and June 1979, when it appears the first official actions on that notice were initiated. It is clear that you rely on this interval to raise a presumption of condonation of the conduct.

From point 3, though, in your facts--this is the first page of the synopsis, members--I am taking it that what happened chronologically is that from October 1978 there then ensued an investigation. Is it true that the investigation occurred between October and June? If that is the case, is that one of the reasons the statement was not acted upon sooner?

Ms. Bohnen: I do not think so. What happened was that there was an initial investigation right after the statement from the restaurateur was obtained and a report was prepared. I will try to find the date that that report was prepared.

It was then submitted to the director of inspections. The director of inspections did not do anything with it. It may be that he did not do anything with it because he was at a certain stage of these events facing the same charges himself.

Mr. Bell: Well, okay--

Ms. Bohnen: Let me finish. He did not do anything with it. Then he was removed from his position, and Mr. A became acting director of inspections; he went through all the men's files and stuff in the office and came across this.

Mr. Bell: What is the date that Mr. A commenced his consideration of the matter?

Ms. Bohnen: I do not know. Maybe Mr. A can tell us.

Mr. Bell: That is another thing you could take under advisement. The reason I ask you that is you know that passage of time in itself is not condonation. If an explanation is available, including the replacement of key personnel, that may or may not be condonation. In many cases it is not.

The committee has the gap between October 1978 and June 1979 filled in or not filled in as the case may be. If there was total inactivity, the committee can decide what should flow from that. If there was something happening, albeit not very well, maybe that is something else.

Mr. Philip: Regardless of what the reasons would be, surely it does not lessen the seriousness of the action. The reason could be quite legitimate, or it could be simple incompetence, but it does not in any way lessen the offence. Whether he is brought in for discipline eight months or two years from the date, it in no way lessens the offence, does it?

Mr. Bell: That is something the committee will have to wrestle with. I am sure Ms. Bohnen's opinion has a lot to do with the circumstances of the act, but it is implicit in your report.

Mr. Wiseman: To follow along on the question of how long it took from November or whatever to June, how long did it take the Ombudsman, once he got started on this, to make his report to the board? How many months elapsed? Can you give us some idea? You went through the same investigation, I hope. Was it a similar time?

Ms. Bohnen: The complaint came to us on September 23, 1982, and the report was issued on January 3, 1985.

Mr. Wiseman: So it took you a lot longer.

Mr. Bell: While we are on the question of periods of time between events, I take it that implicit in Dr. Hill's conclusions and recommendations is that at no time during the three and a half years from the termination of employment to the lodging of the complaint with your office do you believe the complainant accepted or should be deemed to have accepted the events that occurred.

Ms. Bohnen: That is right.

Mr. Bell: How did Dr. Hill come about assessing entitlement to salary in lieu of notice at 12 months? What were the factors that caused your office to conclude that a seven-year employee, not even management, is entitled to 12 months' notice?

Ms. Bohnen: The assessment was based, as you pointed out, on his seven years of service with the board, the man's age when these events took place, his prospects of re-employment and the lack of procedural fairness at the time of his termination. Perhaps Dr. Hill can elaborate, but I think it was his gut feeling that this is what was fair.

11 a.m.

Mr. Bell: That is fine. I just wanted to know.

To wrap it up then, what you are saying is that the man was fired and he was fired without sufficient cause. The particulars of that are that, apart from the benefits issue, similar employees were getting only three months' suspension without pay. On the benefits, it was either or both condoned by the board or not a justifiable ground because it had been condoned in general terms by the board for many of its inspectors in the province. Is that right so far?

Ms. Bohnen: So far.

Mr. Bell: Are you then saying, regardless of whether he was fired with or without cause, he was not dealt with fairly in the circumstances and so he is entitled to the compensation in the terms of the recommendation?

Ms. Bohnen: That is exactly right. Regardless of what he did or did not do, the board had to treat him fairly in a procedural way and they did not do that.

Mr. Bell: Just so the committee has all the relevant facts before it, you and I both know and can confirm that a breach of the rules of administrative fairness is not in itself a cause of action in wrongful dismissal.

Ms. Bohnen: That is correct.

Mr. Bell: However, it may be grounds to quash the firing.

Ms. Bohnen: That is correct.

Mr. Bell: Most recently there was a decision of the Divisional Court involving Dr. Stephenson when she was Minister of Education and a particular teacher wherein a firing was set aside after almost three years. There is some risk that if such a step is taken, there may be a significantly larger amount required to be paid to this person than a 12-month issue. You are not asking for that, but you have said, probably based on gut reactions or instincts, that in the circumstances it should be 12 with the deductions.

Ms. Bohnen: That is right; although it is worth saying that when the complainant approached us, one of the things he wanted was his job back. Dr. Hill felt, taking into account everything with passage of time, etc., this was a fairer result.

Mr. Bell: You and I can both agree that the award of interest is a discretionary award.

Ms. Bohnen: Yes.

Mr. Bell: A person is not automatically entitled to it in the context of the court. One of the things the courts do consider in these cases when determining whether prejudgement interest is to be awarded is the conduct of the person in respect to the relevant issues.

Ms. Bohnen: Yes.

Mr. Bell: I am not saying courts would, but given a delay of three and a half years before coming forward and given findings of some culpability on your part in respect of the allegations, it may be a case where the courts would not award interest.

Ms. Bohnen: Just as they would take into account how unfairly the employee has been treated by the employer before he was terminated.

Mr. Bell: Correct. That is a fair comment.

Mr. Callahan: The first thing I would like to clarify is that I notice the solicitor for the complainant wrote on July 5 to the chairman asking to be heard. Was there ever any reply from the chairman as to whether he could be heard?

Ms. Bohnen: No.

Mr. Callahan: So they just remained silent. I note the solicitor wrote again on July 9. Was there ever any response to that further request?

Ms. Bohnen: I know he was given the opportunity. He ultimately got the chance to make submissions. I do not know that he was told in writing that he would have the chance to do that.

Mr. Callahan: On July 12, the chairman responded by telling him the date, but there is nothing in here to indicate the chairman told him at that time that he could send along submissions. He did it on his own.

Ms. Bohnen: I think he was given to understand that the board would consider his submissions.

Mr. Callahan: The next one gives me some concern about the whole thing, quite apart from the equity or the fairness. Under the collective agreement, is that a condition precedent to taking any steps before the board? In other words, do you have to go through the collective agreement process first as a condition precedent to even getting to the step of getting to the board?

Ms. Bohnen: No. The collective agreement grievance procedures come into play after the full Liquor Licence Board of Ontario has made a decision to terminate.

Mr. Callahan: I note there is an excerpt from the collective agreement, but I cannot tell from that; you are saying that is what the collective agreement says. It is not like one of these clauses in a contract that says arbitration must be taken before you have any access to the courts. You know what I am referring to?

Ms. Bohnen: Dismissal must precede any rights to grieve under the collective agreement.

Mr. Callahan: So it was not a condition precedent. Therefore, the steps taken were the only ones available to the complainant?

Ms. Bohnen: Definitely. Yes.

Mr. Callahan: What about the submission that subsequently, after the dismissal had taken place, those rights were open to the complainant and he did not have access to the Ombudsman under subsection 15(4) of the Ombudsman Act? I want to set the record straight on jurisdiction first.

Ms. Bohnen: By the time he came to us, the right to grieve, which is limited in time under the collective agreement, had expired. We were first approached on his behalf by the union saying it could no longer do anything for this man because of the expiry time and it was forwarding his problem to us. Depending on the legislation and the collective agreement, the Ombudsman has the discretion to investigate certain circumstances notwithstanding existing rights to grieve. Almost invariably the time has expired by the time someone comes to us.

The short answer is that I do not believe clause 15(4)(a) has any application to the case.

Mr. Callahan: Mr. Bell kept referring to this as an administrative act. Is it your position that it was more than an administrative act, that it was a judicial determination of rights and, therefore, subject to the requirements of hearing both sides and the opportunity to examine and cross-examine?

Ms. Bohnen: I would hate to make a definitive statement when the courts have grappled with so much difficulty with that distinction. The best answer is that Dr. Hill felt that, as a matter of civil rights, this man was entitled to have a fair hearing before such a significant decision was made.

Mr. Callahan: If the finding was made on the basis of credibility in particular, one would think the only way to adequately determine that issue would be through examination and cross-examination.

Ms. Bohnen: Precisely.

Mr. Callahan: I have not looked at the Statutory Powers Procedure Act for a long time. Does that govern the conduct of a quasi-judicial board or tribunal?

Ms. Bohnen: In general, it does, but I do not think we would argue that this man had more rights under the Statutory Powers Procedure Act than as a matter of case law and administrative fairness and so on.

Mr. Callahan: What I am getting at is that with anyone who is brought before a board of authority and required to make admissions that might be detrimental to his case, whether it were under threat of being taken to the police or not, the very fact he was brought there without being advised that he had a right to remain silent would seem to me to smack against the question, if not under the Statutory Powers Procedure Act, certainly under common law in terms of hearing both sides and fairness.

Ms. Bohnen: Dr. Hill felt very strongly that was a matter of civil liberties, but we are not arguing the case as a legal requirement under the Statutory Powers Procedure Act.

Mr. Callahan: A final item. At item 4 it says, "The notice did not mention the written complaint by the licensee." Does that mean it said nothing?

Ms. Bohnen: It said nothing.

Mr. Callahan: The first notice received on June 25--granted it was a preliminary step to a hearing--had absolutely nothing in it about the complaint the person had to face?

Ms. Bohnen: All it said was, "You are advised that the topics to be covered will include expense accounts, daily activity reports, meals and the number of calls per establishment."

Mr. Callahan: The hearing was held on June 26.

Ms. Bohnen: Yes.

11:10 a.m.

Mr. Callahan: Although he denied any wrongdoing, subsequently I gather he admitted a lot more than that. Is that right?

Ms. Bohnen: With respect to the benefits allegation?

Mr. Callahan: Yes.

Ms. Bohnen: He said he had eaten without paying at the restaurant. He admitted that. He said he had never been asked to pay. He said he believed this was common board practice at the time.

Mr. Philip: He also ordered food for takeout?

Ms. Bohnen: He denied, and continues to deny, that he did not pay for takeout food. He says he ordered takeout food and paid for it.

Mr. Philip: May I refer you to page 21 of our briefing notes? The solicitor retained by Mr. L wrote to the chairman, Mr. K, on July 5, 1979, but he did not complain that Mr. L had been pressured into resigning, nor was there any allegation of the pressure to resign in Mr. K's subsequent letters of July 9 and July 17. Do you have any explanation for that?

Ms. Bohnen: The explanation is that his prime motivation then was to get a chance to make oral representations and then written submissions to the board. That is what he was going after at the time.

Mr. Philip: I do not accept as a defence the fact that it was common practice. If my neighbour beats his kids, that does not give me any right to beat mine and I can be legally charged for it.

At the same time, I am not quite sure; it is a long time back and I read the newspapers at that time. Can you refresh my mind on exactly what the common practice was? Were a number of people subsequently found guilty of doing the same kind of thing? There were court cases that followed, were there not?

Ms. Bohnen: Yes, there were. I think the court cases and other publicity make it fairly clear, at least to us, that numerous board officials were accepting free food and drink at licensed establishments.

Mr. Philip: Do you have any indication of why this particular person would not have been charged with charges similar to those laid later against others?

Ms. Bohnen: One theory is that the board was quite happy

to dispose of the matter by having the man resign so that it could say to the Ontario Provincial Police, who were conducting an investigation into the board's handling of these allegations at the time, it was taking care of its own house and that further charges were unnecessary.

Mr. Philip: To your knowledge, was it common knowledge in the board at that time that the OPP was investigating this kind of thing?

Ms. Bohnen: I think so. Yes.

Mr. Philip: So he would have been under considerable pressure, if he were afraid of charges being laid, to resign.

Ms. Bohnen: Yes. His boss had been charged too. It was common knowledge.

Mr. Philip: Can you elaborate on the statement that somehow other people who had committed similar offences were not treated in a similar way? If someone was charged, was he charged at the instigation of the LCBO or at the instigation of the police on their own initiative? How did that come about?

Ms. Bohnen: To what are you referring in particular?

Mr. Philip: I do not have the exact page; it may be in the summary of your conclusions. He contends that he was treated differently from other people who did the same thing, others who were guilty of taking bribes of food and liquor. Item 11: "Another inspector against whom similar allegations had been made at the same time as the complainant, with the exception of the complaint by the licensee regarding acceptance of benefits, received a 90-day suspension."

Were there other people who received different treatment who were guilty of accepting benefits? The acceptance of the benefits is the major issue, not the fact that he was a sloppy investigator and he featherbedded his own work by investigating places close to his home and so forth. The serious issue was the taking of bribes.

Ms. Bohnen: It was. The board suspended other inspectors and employees who were charged criminally with accepting benefits. Those people were suspended without pay.

Mr. Philip: Until the court heard from them. Is that it?

Ms. Bohnen: The court heard from them and they also concurrently grieved their suspensions.

I want to generalize and tell you about the case we considered of a fellow who was in such circumstances. Two things happened to him. He was ordered reinstated because the grievance board felt that his continued employment could not jeopardize board practices because acceptance of benefits was not unusual at the time. He was not convicted of the charge of taking benefits because the board held there was no intent.

Mr. Philip: If he was not convicted of taking benefits, is it an identical case to a man who has admitted taking benefits?

Ms. Bohnen: He did not admit to taking benefits. The Criminal Code charge of taking benefits, as you know, requires that there is an intent on the part of the liquor licence inspector to give a favour back to the restaurateur. This man admitted he had free food. That admission alone would not have sustained a conviction of taking benefits.

Mr. Philip: The other chap who was reinstated also admitted to having taken free food in a similar manner?

Ms. Bohnen: I would want to check that before I answer it.

Mr. Philip: Maybe the board may help us later on it.

If I may switch from that kind of role to the opposite role, the other area I find unusual and quite unsatisfying is this, if there was inappropriate action by the board, if someone was suspended without proper cause, then I find it unacceptable that the explanation for a 10-month period should be a gut feeling arrived at by the Ombudsman.

If your case is as solid as you want to make it, why the magic figure of 10 months? Why do you not have complete reinstatement or why do you not have compensation appropriate to the amount of time he has lost? It seems to me that if you are going to find in his favour, you are going to have to find in his favour all the way. Giving him 10 months seems to be saying, "The board was wrong but somehow we will come down somewhere in between because it may be more acceptable to someone."

Ms. Bohnen: No, I do not think that was our reasoning. An employer can always terminate an employee's employment as long as sufficient notice or pay in lieu of that notice is given. You do not have to have someone working for you for ever. You can get rid of him as long as you pay him enough money or give him enough notice.

Mr. Bell: Or get rid of them properly.

Ms. Bohnen: Or get rid of them properly. Dr. Hill felt that reinstatement to his previous employment after this length of time was not called for, so he then considered how much notice ought they have given to the man in the circumstances. The gross figure we started from and from which we subtracted benefits received was a year.

Mr. Philip: How old would this man be?

Ms. Bohnen: He would now be in his early 60s.

Mr. Philip: So in 1979 he would have been in his late 50s.

Ms. Bohnen: Yes. He was 59.

11:20 a.m.

Mr. Philip: I would imagine a man in his late 50s, with no reference from his previous employer, would find it pretty difficult to find any kind of work, even within a one-year period.

Ms. Bohnen: Yes. To respond to one of Mr. Bell's earlier questions, I do not have the dates he got his employment. He was ultimately able to get some employment, off and on, as a security guard. I apologize for the fact that I do not know the dates.

Mr. Bell: Can you get them?

Ms. Bohnen: I would think so. I do not know whether I can get them for you this morning.

Mr. Philip: I would like to have as much information on this as we can get because this is a matter that we are going to have to debate and discuss. If we were to accept the premise that the board was wrong and that the Ombudsman was right, then the whole matter of 10 months becomes an important issue. If the Ombudsman is right, is 10 months adequate? If the Ombudsman is wrong, 10 months is too much. I do not know the answer to that but it is something we will want to look at.

Mr. Pierce: Some of my questions have already been answered, but there are some things I am having a problem with. The union appears in this case to be very reluctant to further the cause of the claimant. Looking at the material we have, it says the claimant was not happy with the amount of time he was given for a hearing. That is justification for a grievance in itself.

He also indicates in the material provided that he was threatened by the board with police action if he did not resign. Again, this is justification for a grievance against the board, and yet none of these things takes place. The union fails to take the claimant's case anywhere. I wonder why that happened. The union seems quite prepared to step aside and let whatever happens to this employee happen.

Ms. Bohnen: All I can say is that different union reps who are present there have different things to say about that. I think some of them were not sensitive to procedural fairness to the complainant. Another one clearly felt that, to use the jargon, they had the goods on him and there was no point in pursuing anything, and others were just awaiting his instructions as to whether he wished the union to do something for him at the time.

Mr. Pierce: I believe, and I have a bit of a background in unionism, that regardless of whether an individual union steward, grievance committee man or whoever feels the guy is cooked, you still go through the procedure and force the board to present all its cards and then you make your decision. You certainly do not make your decision based on what you read in the newspaper, or what the employee or employer has told you. The grievance procedure is still there to be used and, in this case, certainly should have been used.

The other point is, you state in the material here that a previous inspector, doing almost the same kinds of things, had been given a 90-day suspension and then was reinstated in his job. That makes this person's case that much more solid.

Ms. Bohnen: Yes, exactly.

Mr. Pierce: Yet the union still neglects to go back to the board with a good, strong case. I have a real problem with that. There is something here we do not know about.

Ms. Bohnen: There is something more that I know about that I cannot tell you.

Mr. Bell: I have not read that agreement but if it is like most of them, if the union does not support a decision or wish to grieve, an employee may grieve at his own expense. Is that right?

Ms. Bohnen: Yes, that is generally the case.

Mr. Bell: Since I guess from around July 3 this man had a lawyer, do we know why the lawyer did not advise him in respect of a grievance procedure--or did he advise?

Mr. Blair: Mr. Chairman, I do not know your procedures but I am wondering if some of the questions being posed by some members of your committee might very well be directed to my colleague on my right, Mr. Boukouris? He was the acting director of inspections. We do not want to interject unless we are invited to, of course.

Mr. Bell: That is a good suggestion. We can save those questions until we hear from you and your colleagues.

Mr. Pierce: I would like to continue and to wrap up. Again, I go back to what Mr. Philip said. If the Ombudsman feels this employee has been unjustifiably discharged without due cause, then the release sought should have been complete reinstatement in his job. What we are saying is that it is almost like being a little bit pregnant. Maybe he is a little bit guilty but we still owe him something. I would think the relief sought in this case would be that he had been unjustifiably discharged and the only relief that would be acceptable would be reinstatement on the job. Also, compensation should be paid for the time he lost while the case was in process.

I have a hard time with the dates of July 1979 until September 1982. That is really three years to bring this case forward to the Ombudsman after the final dismissal.

Ms. Bohnen: As far as the latter is concerned, I cannot tell you anything more. He was focusing his efforts on attaining comparable employment in the beverage industry. When that failed, he tried to have the matter reopened before the board and approached the Ombudsman only when that was unsuccessful.

As far as the other point is concerned, as to why we did not

recommend reinstatement, taking into account all the water under the bridge I think Dr. Hill felt that the best, reasonably fair remedy was appropriate compensation, not reinstatement.

Mr. Pierce: But in fairness, after that period from 1979 to 1982, I think it would be quite apparent to the employee he should be doing something about it. After the first six months or a year without full employment someplace, he should have felt it was time to do something other than just walking the streets looking for a job at a liquor store someplace. I think at that time he should have availed himself of the office of the Ombudsman--not three years down the road.

I go back to what the employee accepted as being fair compensation at the time of dismissal, plus a goodbye and an old car and no further grievance for three years.

I guess I am not looking for an answer; I am just trying to work this thing out in my own mind as to what was going on in the mind of the employee for three years while he was not doing anything but looking for a job. I do not want to say that loosely. Looking for a job is a full time job in itself.

Ms. Bohnen: It is clear from some of the records I have not gone through today, because it is irrelevant to what we are speaking of, that the matter was really on his mind. He scouted around himself trying to get evidence as to what had happened with the restaurateur. He went back to the union. He certainly did not let the matter drop. But you are quite right, he did not come to the Ombudsman until some time later. I have given you the best explanation I can of why that happened.

Mr. Shymko: He may not have known of the existence of the Ombudsman's office.

Mr. Pierce: I believe we were advertising at that time.

11:30 a.m.

Mr. Shymko: Some of the questions I wanted to address have been addressed. I, too, am sort of perplexed by the statement made by the Ombudsman's office that the union was "willing but not enthusiastically supportive." If one is not enthusiastically supportive, I see the willingness aspect also as being diminished, for some reason or another. I know cases where unions do find adequate reasons to be involved, are very enthusiastic and, in my understanding, give high priority to their members. I just wonder whether you have any additional comments to make on this hesitation, except for your explanation that there was a split opinion.

Ms. Bohnen: I would really hate to speculate any more about what was going on in the union representatives' minds.

Mr. Shymko: Could the complainant have been charged with fraud?

Ms. Bohnen: I do not think he could have been charged

with fraud. The kind of fraud that led to the other people being charged with fraud is not at issue here, as I recall. I suppose he could have been charged with taking benefits in the same way as the other people were.

Mr. Shymko: You indicated in the investigation and research you have done that a number of individuals were criminally charged with accepting benefits.

Ms. Bohnen: Yes.

Mr. Shymko: In other words, if there had been evidence, he could have been charged?

Ms. Bohnen: Yes, he could have been.

Mr. Shymko: The board did not charge him for one reason or another. That is, therefore, an indication of leniency on the part of the board that it did not pursue criminal charges.

Ms. Bohnen: That or some concern about its evidence.

Mr. Shymko: But one may reach the conclusion that for some reason it was lenient in not pursuing it all the way and charging him criminally as it had done in the case of others.

Ms. Bohnen: I suppose that perhaps the board will be able to tell us what its thinking was.

Mr. Shymko: In your research of individuals who were charged for accepting benefits, did you investigate all the cases or just a few? You refer to only one case.

Ms. Bohnen: No, we did not investigate all of them.

Mr. Shymko: So there could be examples of individuals who were charged for accepting benefits and who were punished more severely than just by a 90-day dismissal without salary. Is it possible that if one made a full investigation of all charges against individuals under similar circumstances, there might be examples beyond the one that is constantly being quoted here, the 90-day suspension?

Ms. Bohnen: I would expect that any other LLBO employee who was charged was similarly suspended without pay.

Mr. Shymko: We do not know. We quote one example.

Ms. Bohnen: Perhaps Mr. Blair can tell you whether anything more lenient was done.

Mr. Shymko: That is something we may ask the chairman of the board.

The important part of this, and I think it is being answered substantially, is on pages 48 to 51 of our documentation, the opinion of the Attorney General. It is common practice for a government agency to seek the opinion of the Attorney General in

cases where it may question or may want to verify the conclusion reached by the Ombudsman. In this case the agency did do this. I would like to ask you a few questions on the opinion expressed in the April 19, 1985, memorandum to the legal counsel of the LLBO by a counsel of the Attorney General's office.

The first question I have concerns their opinion. First of all he concludes: "This is not a legal but is rather a factual problem. Assuming that the board is satisfied that the facts are as it alleges them to be, then there is no legal obligation to compensate" the complainant.

Furthermore, he sees this as a question of credibility. The whole issue centres "entirely upon a question of credibility. If the board is satisfied that" the complainant "was not 'pressured' into resigning, then this affords no reason for acceding to the Ombudsman's recommendation."

What do you say to this opinion?

Ms. Bohnen: I agree it is not a legal opinion, to start. We agree that a large part of the question goes to the participants' credibility. But let us not forget that, quite apart from the issue of credibility as to the man's conduct, there is the whole issue of whether he was treated procedurally fairly, and I think the events in that respect speak for themselves.

Mr. Shymko: If it goes beyond the credibility of the complainant versus the credibility of the board, the issue of procedure on page 50 with regard to the Manual of Administration, the opinion of the Attorney General is that if you use section 18 of the Public Service Act, the grievance settlement board has held that section 18 of the regulation does not apply to a bargaining unit employee. Was he in the category of a bargaining unit employee?

Ms. Bohnen: He is clearly a bargaining unit employee. Nevertheless, first of all, the board has told us that it had planned to follow the manual in dealing with matters such as this, including a discipline matter of a bargaining unit employee.

Mr. Shymko: When did they tell you that?

Ms. Bohnen: In an interview with the personnel manager during the course of the investigation. But even apart from that, Dr. Hill strongly felt that, forget the manual, this man was entitled to be handled fairly and that meant reasonable notice, reasonable particulars, a reasonable hearing.

Mr. Shymko: Let us go to the reasonable hearing. According to the Attorney General's opinion, reasonable notice may be a period of more or less than 48 hours and reasonable information does not require that the employee be furnished with copies of statements. Do you agree with that?

Ms. Bohnen: I do not disagree with that, but it is hard to know here why less than 24 hours' notice was necessary. It is hard to know here why they would not have told him that there was

out there an allegation that he took benefits from a licensee.

Mr. Shymko: The conclusion reached by the Attorney General, the advice he is giving to the board, is that if the complainant feels he was unjustly dismissed, he should pursue his statutory rights to grieve his dismissal before the grievance settlement board, which is the appropriate forum to decide the issue of credibility.

Ms. Bohnen: He is out of time to do that.

Mr. Shymko: Why would the Attorney General's office not realize that?

Ms. Bohnen: I do not know. There are a number of factual errors, quite frankly, in this opinion. Even apart from that, this office has always viewed its statutory mandate flowing from the words of the Ombudsman as a remedy available to all in addition to other remedies they may have.

Mr. Philip: Is it fair to say that if he had used the other remedies, if it would have been possible for him because of the time in which he came with the complaint, that you would have preferred him to use those other remedies rather than handle the particular complaint?

Ms. Bohnen: If he had come to us when it was possible for him to grieve, in all likelihood we would have told him to consider making a grievance, yes.

Mr. Shymko: When would that have been in terms of time frame? A year after his dismissal?

Ms. Bohnen: Oh, no. It is a much shorter time period than that. We are talking about days. I do not have the collective agreement.

Mr. Shymko: Did he have a legal counsel? Apparently, there is reference to one.

Ms. Bohnen: Yes, he did.

Mr. Shymko: I find it surprising that his legal counsel would not have advised him about the grievance settlement board and the statutory right.

Mr. Callahan: Are you suggesting another pocket to get the money from?

Mr. Wiseman: Which one of you lawyers?

Mr. Shymko: There are lawyers and there are lawyers. I do not intend to comment on the legal profession here.

I am sure there are cases where counsel would in all fairness remind him of other procedures available. As well, the Attorney General says, "The board's position would appear to be that the fact of the resignation renders academic any inquiry into

the adequacy of the reasons for which the board might have dismissed the complainant." Would his solicitor not realize that accepting or resigning would have closed the door to a lot of these things? Should he not have counselled him that resignation would render any inquiry into the adequacy of the reasons just purely academic?

Ms. Bohnen: It is not my role to defend him. All I can say is that I imagine time was very short. The man's chief objective at the time was to keep his job, and the lawyer made his own decisions as to the best way of achieving that end result for him.

11:40 a.m.

Mr. Wiseman: To clarify: I think Mr. Bell mentioned to the lawyer for the Ombudsman that the man was re-employed probably within a year and you said you would find out the exact time.

Ms. Bohnen: I do not know whether it was within a year.

Mr. Wiseman: Jack was making the assumption that it was about three years and that is why he did not appeal to the Ombudsman before that. Are you any closer to giving us a date of when he started employment?

Ms. Bohnen: No.

Mr. Wiseman: I ask because if it was a year or close to it, as our counsel said, then what the dickens was he doing for the other two years and two months before he went to the Ombudsman? That is important to his--

Mr. Philip: Maybe he was looking for a job.

Mr. Wiseman: If he had a job in the meantime or that sort of thing, and we are not clear on that--

Ms. Bohnen: As I understand it, Mr. Bell was raising the question of when he began to earn some money from other employment because that would be taken into account in assessing any damages owing to him. I am afraid I cannot tell you right now.

Mr. Wiseman: I wonder if that is why the Ombudsman got the gut feeling to go for a year. Was it because he was starting to work after that year? That is what I am getting at too.

Ms. Bohnen: Yes. At lunchtime I will endeavour to get the information as to when he first found work.

Mr. Wiseman: When it was asked for references, the board sent out a reference that the chap, as I understand you to have said earlier, had a heart attack or had a heart condition.

Mr. Bohnen: He had a heart condition.

Mr. Wiseman: Is that true? Does he have a heart condition?

Ms. Bohnen: He had a medical problem. I believe he had that, yes.

Mr. Wiseman: Would it not be better, being an employer myself, to have a report go out from a former employer, saying, "He had a heart attack," rather than one that said, "He quit before he was fired because fraud charges might have been laid against him"? Would a report on his health not be a little softer than something like that?

Ms. Bohnen: No doubt. Silence from Mr. L's point of view would have been even better.

Mr. Wiseman: I took it from what you were saying that this was kind of hurting his chance of employment; but it was the truth, was it?

Ms. Bohnen: It was his view that the reference being given implied that he had a serious heart condition so as to render it unwise for any future employer to want to hire him.

Mr. Wiseman: Would it not be a little easier to accept a person on your payroll who had had a heart attack but whose condition had improved and if you had him checked at 59 to make sure you were not going to have to pay him for lost time, rather than an employee about whom it was said that there was a possibility of fraud or that he accepted bribes or admitted to accepting bribes? I would not hire someone for all the tea in China who had told me that; but if he had a heart condition, I probably would if he had clean bill of health. I just cannot understand it.

To clarify it in my mind: The person you quoted--you quoted only the one, and I was glad Yuri mentioned that--was one of the people who had been charged. Did you say the person who got the three months' suspension of pay did not accept benefits; he had done all the rest except benefits?

Ms. Bohnen: I think I have confused you a little. The liquor inspector who received the 90-day suspension was not charged with taking benefits. He is a different person from the inspector.

Mr. Wiseman: But all the rest was the same, except he was not charged with taking benefits?

Ms. Bohnen: That is right.

Mr. Wiseman: It cannot see why they did it in that case. Again going back to my own experience with hiring employees, if I have someone who is accepting benefits or--

Mr. Shymko: We are familiar with the problems.

Mr. Wiseman: I cannot see that as a good example of why the board did it this way one time and something else in this case.

Ms. Bohnen: Let me explain it this way. It was clear this man received dismissal instead of a suspension because it was alleged he had taken benefits.

Mr. Wiseman: Maybe I am wrong, but did you not say somewhere that you felt he had admitted to benefits, if those are free meals and things of that nature?

Ms. Bohnen: All right. He admitted he had eaten for free at a restaurant, but the Ombudsman felt that this behaviour was relatively common practice among board officials and that the board, by sitting on that evidence for 10 months before using it against the man as grounds for dismissal, had in effect condoned the behaviour.

Mr. Wiseman: I guess the part that worries and bothers me is that I try to bring up my own kids and the employees I have to be honest and I expect honesty from them; when I see the Ombudsman's office condoning in some way something other than what I think it should, it bothers the heck out of me and I am disappointed it would bring in a recommendation like that.

Mr. Philip: They are not condoning the action. They are attacking the process, and that is a good place to start.

Ms. Bohnen: I would like to remind you--

Mr. Wiseman: If someone has cheated and admitted to it in some way, or to taking benefits, I am distressed we would condone that and actually pay him a benefit.

Mr. Philip: If you or I do something wrong on the highway, that does not give the police the right to arrest us in an unlawful manner. That does not mean what we did was right.

Mr. Wiseman: No. It just bothers me. Again I go back to what others were saying. It has been my experience with union representatives that if an employee has a case and, to be fair, even sometimes when he does not, they will stick up for him. They did not in this case. They seemed to wash their hands of him.

Mr. Philip: He did not ask them.

Mr. Wiseman: Sure he did.

Mr. Philip: He did not request help from the union. It is in here somewhere.

Mr. Wiseman: But I am going to back to when you were asked--

Mr. Philip: He did not request it.

Ms. Bohnen: That is correct; he did not.

Mr. Philip: The union does not go around shopping for business.

Mr. Wiseman: When they were asked, in the instance of pressure, the union said, "You may be charged." As I understood you to say, the union rep with him that day did not recall anybody pressuring him. The acting personnel officer said or surmised that

there were others who had been charged and that he probably would be. Maybe that is what pressured him, but no one pressured him that day; even the union rep said that. To me, that says something about the credibility of the person going to the board. He had nobody saying they agreed with him, but that was said there.

Ms. Bohnen: Could I speak for a moment about the taking of benefits? I would like you to remember that what we are talking about here is eating a free meal in a restaurant. There has never been an allegation that this inspector was more lenient in performing his duties because of it. There has never been any allegation of a favour flowing from the inspector to the restaurateur.

The only allegation is that he ate several meals without paying for them at the restaurant. That is what we are talking about when we say he accepted benefits.

Mr. Wiseman: However, when people out there read this or read it in the papers, they see that people usually give you something wanting something in return. People do not give you something for nothing these days or at any time, I have found in my 55 years; they expect something if the tide turns.

Dr. Hill: My counsel is speaking for me for the most part, but I want to put it on record that if you look at my report, I have never condoned the actions of this person. I am talking about the fact that even the worst criminal in the world gets procedural fairness in our system.

The issue is not what he did, but whether procedural fairness was followed in dealing with that individual. I thought that was the thrust of my argument throughout my complaint. I did not want to interrupt my counsel, but I think that is the issue. I did not want it left on the record that I condoned it, and I think I have made it very clear I did not condone it. However, I look very strongly at the whole question of procedural fairness; that is built right into our system and that is what I am worried about.

11:50 a.m.

Mr. Chairman: I have the following members on the list: the member for Brampton (Mr. Callahan), the member for Prescott-Russell (Mr. Poirier) and the member for Ottawa West (Mr. Baetz).

Mr. Callahan: I refer to page 14 of the Ombudsman's letter to Mr. Blair; I want to know if this is factually correct. It says in paragraph 2:

"On July 6, 1979, the discipline committee decided to recommend to the chairman that Mr. L be dismissed for falsification of expense accounts, excessive inspection of premises closest to his residence, conducting spot inspections without another inspector without prior approval of the board and accepting benefits from a licensee."

Were all those grounds the basis for the dismissal? If they were, one would think that for the falsification of expense

accounts, criminal charges could have been successfully pursued. In addition, it is my understanding that the complainant, when he appeared before the board, denied everything except the acceptance of benefits from a licensee. Are those factually correct?

Ms. Bohnen: Yes.

Mr. Callahan: If that was the finding--and it has been acknowledged that credibility was an absolute necessity--without the benefit of hearing both sides, examination and cross-examination, how could one ever arrive at the proper decision?

Following up on that, if that is correct, I would ask Mr. Bell or perhaps counsel for the Ombudsman, and this goes to Mr. Philip's question--I know what the law is today, but I am not sure what it was at that time--have the courts not also taken a position that if the actions of the employer were such as are alleged here, i.e., that he would be turned over to the police if he did not give his resignation, they would also award punitive damages?

Ms. Bohnen: The law seems to be now that it is available to a court to order those. I do not think there were cases at the time that said that, but Mr. Bell probably knows better than I.

Mr. Bell: As you know, Mr. Callahan, punitive damages have been awarded in wrongful dismissal cases in about only two occasions in Ontario, both of which were highly unusual in circumstances and involved what the courts would call unfeeling and extremely high-handed conduct on the part of the employer.

Implicit in an award of punitive damages is a finding that there are no grounds for dismissal. If you are asking me whether this is a case for punitive damage--

Mr. Callahan: No. All I am asking you--

Mr. Bell: They were available then but only rarely.

Mr. Callahan: Okay. Just to follow up on that: Without deciding, because we may be in difficulty ourselves if we make any statements before hearing from Mr. Blair and his counsel, if the facts to be found by any tribunal were that the complainant had been pressured to resign under threat of being prosecuted, would you not conclude that this was a high-handed step on the part of the employer which would bring it within those exceptions of being high-handed actions and subject to punitive damages?

Mr. Bell: My understanding of the law is that when one person threatens another person with criminal prosecution to induce that person to do an act, that in itself is a crime.

Mr. Callahan: It is a crime itself. That is right.

Mr. Bell: If those facts were found by a court, the court might well consider it to be conduct of the worst order by an employer. I see the Ombudsman has been assiduous in avoiding

that conclusion or commenting in that respect. I am not sure how relevant it is. Dr. Hill put his finger on it. The issue here is not whether this person was justified in being fired but how he was fired.

Mr. Callahan: Procedural fairness; no question. I am not suggesting that either. I would like to find out whether, at page 14, in the third full paragraph, that is a factual statement. It is midway down that paragraph:

"Additionally, Mr. E, then personnel manager with the board, has stated that he told Mr. L that unless he resigned, the board would submit its information to the police and criminal charges would probably result."

Ms. Bohnen: He said that in an interview to our investigator.

Mr. Callahan: So that is a factual statement. Was that evidence before the board when the decision was made? Maybe I can ask Mr. Blair or his acting chief of inspections, because that is germane to the question of what evidence was before the board. You say that it is factually correct and that the investigators were told that?

Ms. Bohnen: Yes.

Mr. Callahan: Thank you.

Mr. Poirier: I realize some of the questions seem to imply we are looking at whether this man is guilty or not. In some of the issues about the union, I fully agree with the two points you brought up. But, as a procedural affair for this committee, I presume that what we are asked is to look at the issue of the complaint itself; namely, the three particular points in the first page of the synopsis. Obviously we do not want to condone. We do not know whether the man is innocent or guilty. That is not the point before us today. It is the three points of complaint at issue, and correct me if I am wrong, these are the only three points we have to address. Is this not correct?

To save time, I would invite all of us to restrain ourselves to these three points unless there were other points we wanted to consider.

Mr. Bell: Mr. Poirier, the parties agree those are the three issues that are germane, in respect of which Dr. Hill has made findings which caused him to make his recommendation. Obviously, how you determine those issues will, I venture to say, automatically determine how you dispose of the Ombudsman's recommendation.

Mr. Porrier: The man may be guilty as accused. He may be innocent. It does not really matter as much as what happened and how this was brought about. Is that correct?

Mr. Bell: Except that implicit in number 2 is the determination of whether grounds existed to terminate him for

cause. Simplistically, we do not have to be that interested in whether or not cause existed if we all agree that it is the procedural aspect that matters.

Mr. Porrier: The procedural aspect and also the allegations against him and others. I would like to know if that was in keeping with what happened to other employees in similar situations and that is the only point. I do not want to address his guilt or innocence because we do not have the information in front of us to determine that. Some of the points that came through this morning seemed to be that we want to make a process of this man in a certain sense. I do not want to do that myself. I would like us to remain with these three points, if that is possible.

Mr. Baetz: My questions relate to the second issue, in other words, was the board's decision to dismiss the complainant reasonable in view of the allegations against him?

Before you can answer whether it was reasonable or not, it seems to me we have to get a better perspective on this prevailing practice or policy of courtesy, gifts, whether of a meal or whatever. I would like to ask the Ombudsman's staff what their perception is of what is the board's prevailing practice or policy. I ask the question now because later on when we hear from the board, I would like to get a better handle on what you perceive to be the policy and practice governing these courtesies.

We have heard today that some people were suspended for three months without pay, others were dismissed, and in this particular case the man was urged to resign because if he was not going to resign they had the goods on him to lay criminal charges.

12 noon

What really is the policy? It is not only the policy but also the practice because in this case, as in many others, we know there is a slight difference between what the policy is and what the regulations are and what the practice is. As Mr. Philip mentioned, it is a bit like our Highway Traffic Act. We know what the law is but we also know that every good citizen is constantly breaking that law. The only time one gets caught is when one gets into a radar trap or whatever.

Mr. Philip: I never admitted to that, Reuben.

Mr. Baetz: I am expanding on that.

The only time one gets caught is when one has bad luck and runs into a radar trap or something, or in cases when one breaks the law and gets pulled up.

Mr. Philip: You cannot count those free opera tickets. I got them when I was seeing opera with you.

Mr. Baetz: It would be very useful for our deliberations to get some comment from the Ombudsman's office about how you perceive this practice and policy to be in effect there. Later we will hear from the board what life is like there and what happens.

Ms. Bohnen: We found from our investigation that in 1979, when the statement was received about our complainant, it was a fairly common practice. There is evidence that at a public meeting involving board employees, even the chairman said he did not see anything wrong with having a free meal in the company of a licensee. There is no doubt though, after the flurry of charges made by the Ontario Provincial Police against a number of board employees and all the attendant publicity, that it was strictly forbidden at the board to have anything more than a free cup of coffee, if that. We believe that today it remains strictly forbidden, but at the time of these events it was not, it was common practice.

Mr. Hayes: There seems to be a lot of discussion surrounding the union representing this employee. According to the letter on page 3, there was confusion in the persons not knowing what their rights were, and the time limit had elapsed. The union would not have the right to proceed with that case according to the collective agreement. Am I right on that?

Ms. Bohnen: After the time had expired?

Mr. Hayes: Had the time limit expired before this employee went to the union?

Ms. Bohnen: No. Sorry. There were union representatives present at the first investigative hearing. So he would have been in time then had he wished to formulate a grievance.

Mr. Hayes: Had the employee said to his union representative at that time that he wanted to grieve it, he could have, but he did not do that.

Ms. Bohnen: That is right.

Mr. Hayes: There was a lot of fear, it was said, in many other people at the same time. That employee did not know what direction to go in. Therefore, he did not direct his union representative to grieve this case.

The board might be able to give us that answer. Do you know if the union, even after the time had expired, went to the board and tried to proceed? Did it make a verbal request to ignore the time limit?

Ms. Bohnen: No.

Mr. Hayes: They took it for granted they did not have the right to grieve it because it had expired.

Ms. Bohnen: Or that they had not been asked by Mr. L to do anything for him.

Mr. Hayes: They had not been asked.

Mr. Henderson: It may be because I do not have a legal background, or it may be my nature, but I find myself less drawn to considerations of precedent and procedure than to trying to

assess what is fair to an individual, which may or may not be the same thing. I am posing to myself, and perhaps I can pose it at large, a question about balancing. Which is the greater of two potential unfairnesses?

On one side, we are talking about a man who accepted courtesy, presumably in exchange for goodwill or something akin to that. He may have deviated in his preparation of expense accounts, which is, within certain limits, not an unusual thing to do. He may have overinspected premises close to his residence. He may have involved himself improperly in spot inspections. On the other hand, it seems to me that on the part of a government agency there is a failure to warn somebody adequately--or perhaps warn him at all--that his behaviour was questioned.

There was the probable pressuring of him into resignation and the fact that another inspector was not dismissed; therefore, it seems to be that the acceptance of a courtesy was the major determining variable. There was also the apparent condoning of activities that later were felt to be grounds for dismissal, the apparent failure to give adequate notice of hearing, the shortness of the hearing, the absence of cross-examination and the absence of a lawyer--all that from a body that presumably is expected to have a very high standard of morality; I would be tempted to say a higher standard than an individual, but, in any case, a very high standard.

I pose to myself the question--and I guess I pose it at large--as to which is the greater unfairness and whether the Ombudsman may not have been correct in seeming to support the individual without condoning his behaviour.

I have one very short question. Am I correct in understanding that the licensee on his own offered meals to the inspector and then made a complaint that the inspector had accepted what he had offered? Is that a correct understanding of what occurred?

Ms. Bohnen: It is as correct as I think we are going to get. That is, it is admitted that he ate meals at the restaurant, it is stated that no bill was ever tendered, and it is evident that at a later stage this restaurateur made a written statement complaining about this very thing.

Mr. Philip: Does not the statement say there was a new owner, a new manager of the restaurant, and the manager, in his previous experiences on two separate occasions in two separate establishments, had never had this kind of conduct from a board inspector? It seems in the statement it was partially motivated by the fact that suddenly this kind of activity was going on in his new establishment, his third establishment.

Mr. Henderson: Where did you see that?

Mr. Philip: I thought that was in some of the documents.

Mr. Henderson: There is no evidence that the licensee even commented to the inspector, let alone complained, before he complained to the board.

Ms. Bohnen: That is correct.

Mr. Chairman: This might be a good time to break for lunch. Would it be possible for the committee to meet at 1:45 p.m. instead of 2 p.m.? We have the Workers' Compensation Board coming before us as well.

The committee recessed at 12:08 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
THURSDAY, SEPTEMBER 5, 1985
Afternoon sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)
VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)
Baetz, R. C. (Ottawa West PC)
Bossy, M. L. (Chatham-Kent L)
Hayes, P. (Essex North NDP)
Henderson, D. J. (Humber L)
Morin, G. E., (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Philip, E. T. (Etobicoke NDP)
Pierce, F. J. (Rainy River PC)
Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Bossy
Poirier, J. (Prescott-Russell L) for Mr. Newman
Smith, D. W. (Lambton L) for Mr. Morin
Wiseman, D. J. (Lanark PC) for Mr. Sheppard

Clerk: Decker, T.

Staff:

Bell, J., Counsel
Madisso, M., Research Officer, Legislative Research Service

From the Office of the Ombudsman:

Bohnen, L. S., Director, Investigations
Hill, Dr. D. G., Ombudsman

From the Liquor Licence Board of Ontario:

Blair, W. L., Chairman
Boukouris, P. G., Director, Policy Development
Grannum, S. A., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, September 5, 1985

The committee resumed at 1:47 p.m. in room 151.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: The committee will come to order. We have representatives from each party here. We will call on the counsel.

Mr. Bell: I believe members had concluded their questions of the Ombudsman and Ms. Bohnen. Do you have any final words to add before we ask Mr. Blair and his colleagues to address the committee?

Ms. Bohnen: In response to an earlier question, I have been informed the complainant had no employment earnings during the first two years after he left his employment at the board.

Mr. Bell: With that, Mr. Blair, either yourself alone or with the assistance of your colleagues, would you now address the committee as to the reasons the board does not accept the Ombudsman's recommendations and does not intend to implement them?

Mr. Blair: I have no comment on that last phrase. We will see what happens.

Mr. Chairman and members of the committee, I made a few notes to guide me in the deliberation I am going to give you, but I had to change that a little in the light of the questions that were asked this morning and to save time.

The Ombudsman has made his case mainly on the manner of procedures and so on and whether they were adopted or otherwise by our board. We are concerned about procedures as well, but we are also concerned about the individual and his welfare, even though he was not acting the way he should have been while employed by us. I want to make an observation to you about the setting in which this whole business took place.

This was in the early part of 1979 when a number of the inspection staff were in trouble, to put it mildly. As a result of certain allegations that were made in public, it was the board itself which asked the Ontario Provincial Police to investigate the actions of some of our people. You have to keep that in mind as well.

During that period there were nine members in trouble. As a result of certain actions in court and otherwise, six resigned, including the complainant in this case. Some were taken to court and, as a result of the court convictions, resigned. Two were reinstated on order by the Crown Employees Grievance Settlement Board. These two were in Ottawa and were charged with accepting

benefits and uttering. The charges for accepting benefits were withdrawn, and they were convicted on the other charge. They appealed to the grievance settlement board and were reinstated with full back pay to the time of the suspension without pay.

Mr. Henderson: What is "uttering"?

Mr. Blair: Signing other people's names on statements and things.

Mr. Pierce: Bad cheques.

Mr. Blair: I may just elaborate there. When inspectors go in to do an inspection, they record what they have found and in one corner of the form is a provision for the licensee, or the manager in charge that particular day, to sign that he is aware of the shortcomings in his operation and the comments that the inspector is going to forward to the department.

As I said, two were reinstated and one was suspended without pay for 90 days. We heard a lot about that this morning. We have to look at the complete setting and not compare in isolation the manner of dealing with Mr. L, the complainant, with one other member of the inspection staff.

A lot has been made about the notice, 24 hours versus 48. We are not denying that. However, we want you to note that there was no complaint made by Mr. L or his legal counsel who appeared with him on the date of that first disciplinary hearing. At no time was there any complaint about that notice. The shop steward and others were there as well and the hearing was presided over by my colleague Mr. Boukouris, who is Mr. A in your report.

I want you to remember also that if you are thinking about this man being hard done by, the actual decision by the full board--incidentally, I was not there then; it was somebody else--to terminate Mr. L's employment, was made four weeks after that first notice to Mr. L that he was being investigated.

I want to make an observation about the timing. I am going to suggest to members of the committee it is not just a coincidence that the complainant waited for more than three years to complain to the Ombudsman. As was referred to this morning, the Ombudsman's office had been established years before that and I am sure he was well known.

In the interval of three years, many of the so-called players, to use that term in a loose way, who were on the scene in 1979 had left the board; some of their own volition, some as the result of court proceedings and other disciplinary action. In some instances, not only had they left the board, they had also left this world.

A lot has been said about the matter of resigning. On July 23, 1979, the board decided to terminate Mr. L's employment. I would imagine they had good and sufficient reason to do so. Before that decision was communicated in writing to Mr. L, he resigned, as I understand it, on the advice of the union. Reference has been

made that the union was not enthusiastic about supporting Mr. L. Not only were they not enthusiastic, they also decided, after seeing the full file with Mr. L and members of our board, they would not support him in pursuit of the decision that was about to be made or had been made.

There is reference in the report that the then acting director of inspections, who was Mr. Boukouris, had harassed Mr. L into resigning, or whatever other term was used. It just so happened that Mr. Boukouris was away in Europe on vacation during the whole month of July, so he was not really involved subsequent to that early disciplinary hearing held on July 24 or 25.

As far as our board is concerned--and there are some of you who have been members here long enough to know I came on the scene in 1981--it is very interesting to us that at no time did Mr. L or anyone on his behalf approach the grievance settlement board, which he could very well have done at any time, before and after, with the knowledge that two of his former colleagues who had been in trouble went to the board and were reinstated with full back pay. I would have thought he would have expected a full and fair "hearing" before the grievance settlement board in the light of how it handled the case from two members in Ottawa.

I think you will find through this whole piece that, in the board's activities, it had in mind the welfare of Mr. L. Much has been said about the fact that 10 months before he was made aware he was under investigation a report was submitted and in the files of another person who was under investigation. When the acting director of inspections came on the scene in May 1979, in viewing the files, he found this one and took appropriate action. I would suggest that is an explanation of those 10 months, if indeed that is an issue.

In these whole proceedings, the complainant never denied wrongdoing. I think that is important. Also, I think it is significant when you relate it to the fact the union, as was said here this morning, will take up the cudgels for one of its brothers even in a weak case. In this instance, it did not.

Even after Mr. L resigned, he could have taken appropriate action, but he chose not to do that either. He waited for three years to seek redress for something for which he thought he had a case for an Ombudsman.

In this whole business, there is always much more than appears in any document. None of you has been around as long as I have, I guess, but those of you who have been around know there is more to an issue than something that is put on paper. It is just as well, although it can be difficult when you get into a situation such as this, where one jurisdiction is trying to establish some wrongdoing or something. However, when you look at it, you realize this individual was in the long term far better to have resigned than to have charges laid against him and a conviction in court.

Reference was made to the fact that when he sought references from the board, someone there told the inquirer he had

suffered a heart attack. Discussing this with my two colleagues, this was news to them. However, it does not take much imagination to understand why a person might just stretch the truth a little in trying to help someone in difficulty.

I think through this whole piece, even though some of the procedures were not followed--maybe not right to the letter of the law--nevertheless, having due regard for his part in this procedure, the welfare of the individual concerned was well looked after by our board. If we had to do it again, I presume we would do the same thing.

I want to answer a question, posed by Mr. Baetz, about accepting benefits. It is a very serious offence and contrary to the Criminal Code. In the hospitality business, as you can appreciate, by the very nature of the business itself and the people who are in it and their origins, such as Europe and other places that maybe have a different code or practice from people here, it is pretty difficult sometimes to say "No."

2 p.m.

When I appeared on the scene four and a half years ago, I had meetings with the inspectors in small groups, maybe 15 or 20--at that time we had quite a few inspectors; we have a lot fewer now--and I reviewed their relationship with the board and the conduct of their business and made reference to the acceptance of benefits. I am pointing this out, I did it on my own. I reminded them of the Criminal Code and that they were representing the board in their particular area.

I said, "There is a word in the dictionary that I think could be used here to great advantage, and that word is 'discretion.'" Knowing full well the temptations and, coupled with that, the limitation, I said, "I want you all to use discretion but I do not want to hear of you using discretion in the same place very often." I left it at that. That has been pretty much followed since then. I know it is difficult thing, but I am quite satisfied the vast majority of our inspectors are following that, because I hear very few complaints.

I do not have much more to say, especially in the light of the questions that were asked this morning which I was a little surprised at. Mr. Boukouris is familiar with the technical things and he was on deck at the time these events and activities took place.

It is our view that the procedures in the employee's contract--maybe all of you knew that the inspectors are all in the union--have to be obeyed and as far as we are concerned, they have been. I do not think there is anything more I want to say now, knowing the limitations you and the members of the committee have on the time this afternoon, but I would be happy to answer questions.

I did jot down a question that was asked this morning. The benefits Mr. L received were the normal benefits: a week per year of service. The severance pay was done according to a formula in

place. We did not give him a couple of extra to keep him quiet or anything like that. It was done in accordance with the formula already in place.

I will make an editorial comment that when a person is investigated and is found wanting in a few areas, it is our opinion, and I am sure that of our supervisory people, that the very fact he is being investigated is surely a signal to him to know he is being watched and he had better pull up his boot straps and do what he is supposed to do. The main thing is to give him another chance. I have no doubt in the world that this gentleman was given more than a fair chance to get back on stream. It is the board's contention that the recommendation of the Ombudsman is not acceptable to us because we think we have done the right thing.

Mr. Chairman: I call on counsel, Mr. Bell.

Mr. Bell: I will get mine out of the way first. Mr. Blair and/or Mr. Boukouris, let me try to focus on what I think is the key issue and that is not whether the man was fired or whether he was fired with cause, but whether how he was fired was, in the circumstances, appropriate. You have heard us talk about procedural fairness or administrative fairness.

A general question first. You heard Ms. Bohnen describe the chronology of the process, and thank you for your explanation of the gap between October 1978 and June 1979, the fact that the statement was in somebody else's file and was found later. On the process and the chronology that she explained this morning, do you agree that it is essentially correct?

Mr. Boukouris: The only thing I would suggest is that you should be aware that under the collective agreement, section 21, which is the grievance procedure, is not limited to discipline cases. That is a misunderstanding. There is a provision there for investigative hearings which is not intended as a discipline at all. It is a fact-finding arrangement. It was under that section of the collective agreement that I had the only hearing I had before me with the complainant.

The collective agreement provides that if there is going to be more than one member of management present, they are to be given a notice. There is no time frame for the length of notice in the collective agreement and that is what we were following. There is an understanding that it would be done as soon as possible after the facts come to light.

In that case we tried to get the very first business day that we could to get the complainant into the hearing room. He was advised and so was the union, simultaneously.

There is a suggestion in the report before you that there was insufficient time for him to obtain counsel, in the opinion of the Ombudsman's office. Against that was the fact that he did obtain counsel and the counsel was present at that time. He had two lawyers with him, the normal counsel for the union plus a student lawyer seconded from the Ministry of Labour, and two other individuals.

That was an investigative hearing under that section. It was not a disciplinary hearing. It was a fact-finding for the purpose of informing the individual what the concerns were. The letter to him was intended in general terms and was phrased in a very general way, because the purpose of the meeting was to have him there so that he could explain to us, if he wished, whatever allegations there might be. His counsel suggested that he did not want to.

The letter written to him was for the purpose of bringing him in, so that management would have an opportunity of seeing the individual face to face. You have to appreciate that the inspection staff are all over the province. They are not normally working in the office, so there is a necessity to bring them in for an explanation.

The counsel he brought with him was experienced in these matters, and he was already handling similar cases of other union members at the very same time, successfully as it turned out in two cases that went to the settlement board. It was not suggested at any time that the investigative hearing itself was out of time or that he wished an adjournment, which I would have been happy to grant, had he suggested he wanted one.

Mr. Bell: So we are talking now about the June 26 investigative hearing, which is described in paragraph 5 of the facts in the synopsis?

Mr. Boukouris: That is right. I want to make it very clear that the implication there is that that itself is a disciplinary procedure. It is not. I want to make that very clear.

Mr. Bell: This side of the room did not take it that this was disciplinary in nature because the facts go on and Ms. Bohnen went on this morning to describe the discipline process on July 6.

Mr. Boukouris: It was all done under the collective agreement.

Mr. Bell: Just let me finish, please. That discipline process of July 6 is different from the investigative hearing you just described.

Mr. Boukouris: Very definitely.

Mr. Bell: You now say that this individual attended on June 26 with no fewer than two legal advisers, and no adjournment was requested.

Mr. Boukouris: That is right.

Mr. Bell: What do you say about the July 6 event, when again the evidence from Ms. Bohnen is that he retained counsel on July 3, who attended with him on July 6 and said he wished an adjournment due to insufficient time to prepare?

Mr. Boukouris: By that time, I had left the scene, but I understand he changed solicitors at that stage. That was a new solicitor.

Mr. Bell: Yes. So there is no issue with the fact that he retained a lawyer, on or about July 3, who attended with him and requested the adjournment?

Mr. Boukouris: Another lawyer, that is right.

Mr. Bell: And the adjournment was refused.

Mr. Boukouris: That is what the record indicates, yes.

Mr. Bell: Well, it was. Can you confirm what I understand from the material, that the process that occurred from the investigative hearing leading to the board's decision to terminate, the process employed in this case, is not employed any longer for current and similar matters?

Mr. Boukouris: Not by the Liquor Licence Board of Ontario, although the other board is still doing it. At that time the two boards had a more common administration than they do now.

Mr. Bell: Tell me what is the liquor licensing board doing differently now?

Mr. Boukouris: They no longer use the discipline committee that then existed so that middle stage combined with the Ontario Liquor Control Board. The two liquor boards no longer have that common discipline committee.

Mr. Bell: What does the board receive and act upon and from whom?

Mr. Boukouris: They will have an investigative hearing of the same type that was held in this case.

2:10 p.m.

Mr. Bell: At that hearing today or now, is the person against whom the allegations are made allowed to attend with counsel and to examine witnesses and lead evidence on his own?

Mr. Boukouris: No, it is not a hearing of that kind. There is an investigative hearing which is simply fact-finding. It is not a hearing in the sense of an adjudication.

Mr. Bell: No, I am not suggesting adjudication. I am just suggesting a hearing of evidence.

Mr. Boukouris: It is a more informal thing than that.

Mr. Bell: Is the complainant made aware of the substance of the allegations against him and given a reasonable opportunity to respond?

Mr. Boukouris: Yes. In this case, the investigative stage did not change. Then what happened was the full file, including the investigations and letters from the public complainant, were handed to the solicitor and to the union representing him at that time. At that stage, no question of discipline had been decided upon. Then the supervisor, who in this complainant's case was I, made a decision whether or not a discipline would be warranted. If he believes so, he then makes a recommendation for discipline to the discipline committee. In this case, I did. I recommended he be dismissed and sent that to the personnel manager.

At that stage, I was out of it completely. What would happen then is that case would go right to the board, which would normally appoint some other individual. It is a provision in the collective agreement for what is called a second-stage hearing. That is where discipline will be decided. It is entirely within the board at that stage.

It has been the board's preference at that stage, although we have had very few of these cases, to take submissions, written or oral, from anyone it wishes. When this occurred, the discipline committee took written submissions. At the time the letter went to the discipline committee suggesting that he be dismissed, their recommendation went to his solicitor and union. So they knew when the discipline committee was meeting, they were going to be asked to discipline and dismiss the individual.

They had a copy of all the documents, and he was told that a written submission would be acceptable. The change now is that they do, indeed, take verbal submissions from whomever they wish to bring. At the stage this happened, they were told a written submission would be considered by the discipline committee.

Mr. Bell: You have given us an awful lot in that answer. I want to make sure I heard you correctly. Did you say that in this case the complainant or his legal representative had available or was provided with all the material you had?

Mr. Boukouris: Yes, they were.

Mr. Bell: Just let me finish my question. Did he have all the material you had and had considered in coming to your recommendation to terminate this man's employment?

Mr. Boukouris: That is correct.

Mr. Bell: Let us take it a step forward. You reported to the discipline committee and the discipline committee, whatever it is and whatever it did, reported to the board.

Mr. Boukouris: That is right.

Mr. Bell: Are you saying the complainant and/or his legal representative had available to them or were provided with all the material the discipline committee had?

Mr. Boukouris: They had everything I had.

Mr. Bell: Does that answer my question, though?

Mr. Boukouris: I believe so. As far as I know, that is the only documentation the board possessed.

Mr. Bell: Were they provided with all the material and information that went to the board upon which the board made its decision?

Mr. Boukouris: They forwarded the information to the board.

Mr. Bell: Who are they?

Mr. Boukouris: The discipline committee.

Mr. Bell: Was all the information forwarded to the board made available to or provided to the complainant or his legal representative?

Mr. Boukouris: Yes.

Mr. Bell: That information contained specifics of the four grounds of dismissal?

Mr. Boukouris: It did. It consisted of the inspection reports themselves, his diaries, his expense claims and complaints from the licensee.

Mr. Bell: I take it now if a person wishes to appear before the board with or without legal counsel, before the board makes a decision whether or not to terminate, that request is granted?

Mr. Boukouris: Yes.

Mr. Bell: That was not the case when this happened in 1979?

Mr. Boukouris: No. The practice then was that the documentation only went to the discipline committee. They had the documentation that was in my possession as the department head and whatever written submission the complainant's solicitor wished to provide. They had written submissions from both sides, but I was not at the discipline committee and neither was he.

Mr. Bell: I am going to anticipate Ms. Bohnen in part of her response. I am sure one of the things she will say, in effect, is that their investigation revealed that at the investigative hearing stage the complainant attended alone and not with legal counsel and that there was no question of his opportunity to have legal representation. What do you say to that?

Mr. Boukouris: That is not true. It is an error of fact. He was represented by a solicitor for the union and the union

president. It is in my record of November 12, 1982. It is in your file, at least in the file that was given to me.

Mr. Bell: Part of the Ombudsman's conclusions and recommendations deal with whether or not this person was dismissed. The board's position is clear, saying quite literally that he resigned and, therefore, it did not fire him. There is no dispute that the corporate board did make a decision to terminate this man before he resigned.

Mr. Boukouris: That is correct.

Mr. Bell: Earlier, Mr. Blair said that before that decision was communicated, the complainant volunteered his resignation, apparently upon advice of the union or perhaps someone else. Do I take it, even though the decision to terminate was not communicated directly to him, that decision had nevertheless been communicated to others, such as the union or legal representatives?

Mr. Boukouris: That is correct.

Mr. Bell: And they passed it on to him?

Mr. Boukouris: Yes. What always happens in these cases is that as soon as the decision is made, they are told. Both he and the union would have known that the board was considering that particular case at a certain time. As a courtesy, just as the grievance settlement board does, they normally will telephone both sides and tell them what decision has been reached, and then a confirmation follows. That is the process that went on in this case.

Mr. Bell: So his decision to resign was made with actual knowledge of the board's decision to terminate.

Mr. Boukouris: That is right.

Mr. Bell: The only other feature--I am not sure I understand what your position is on this--is that Ms. Bohnen quotes somebody in personnel, as part of their investigation, as admitting there was a discussion with the complainant before he resigned that if he did not, the matter probably would be referred to the police. What do you say about that?

Mr. Boukouris: The only note I have of a direct reference to the police is when the licensee who had made the complaint telephoned to the personnel office and complained that the complainant was trying to get him to withdraw his complaint, and he was told that if he felt threatened, he should get in touch with the local police, in Mississauga. There is a reference somewhere to the Mississauga police.

We would never have suggested the Mississauga police because we pay the enforcement branch of the Ontario Provincial Police to maintain the liquor laws and, as the record shows, the board had already asked the OPP to look into the activities of the inspection branch personnel. The suggestion that they could be told that is wide of the mark.

I would expect, because the police were actively involved, at some stage the complainant might have asked the personnel officer or his supervisor what the likelihood of police involvement might have been. That would be a normal question in a man's mind in his circumstances. It is the only answer than anyone could give. This is only conjecture on my part. I was not in the country. In any case, I would not be privy to the conversation between him and the personnel manager.

I would surmise that the personnel manager, if he were honest, would have to say there was indeed some risk. Among other things, we could not undertake that the police would not be informed of this because they had access to all the files at the branch. At some stage, if they looked through all of them, they would have come across this. That undertaking could have been made, but--

2:20 p.m.

Mr. Bell: To your knowledge, were the specific activities of this man whom we have been considering investigated by the police?

Mr. Boukouris: I was told by the police that they were aware of his activities.

Mr. Bell: Is that saying that they were investigated?

Mr. Boukouris: They never tell us the details of their investigation, but I believe they were aware of it. They certainly had access to all my files.

Mr. Bell: I am not sure what you are telling me, since I noted what Mr. Blair said earlier, and I believe I have him noted accurately, that a person such as the complainant was far better to have resigned than to have charges laid and heard in a court. That sounds an awful lot like an agreement that the man was told words to the effect, "If you do not resign, there is a real likelihood that charges are going to be laid and the matter is going to be aired in court." Can we clear that one way or another?

Mr. Boukouris: I do not know what Mr. Blair's intention was there, but I do not believe that could possibly be the case. There was never any suggestion that I know of, either at the time or subsequently, that his resignation was ever noted as a possibility until after the board's decision to terminate him. That suggestion for resignation came to us from the union. We were given to understand by the union that they were acting on his behalf and at his request to see if we would accept a resignation prior to the processing of the termination which had already been decided.

Mr. Bell: Ms. Bohnen said this morning, when I asked her where she believed the rules of administrative fairness had not been adhered to, that the evidence upon which the board acted in formulating its decision to terminate should have been evidence tested by a process whereby witnesses were called to testify and

subject to cross-examination and the complainant given an opportunity to lead his own evidence. We know that was not done. What do you say about Ms. Bohnen's position that it should have been done?

Mr. Boukouris: I would say that if there was some question as to fact, it should have been raised in the written submission by solicitors, which we would then process. As I describe it now, it would take oral submissions at that stage. All the employees' cases went to a discipline committee which received written submissions from both sides.

I suggest that a grievance settlement board provides sworn witnesses on cross-examination and all those things. If he had wished to avail himself of that, though apparently he did not wish to do so, that is the stage at which that would have occurred.

Mr. Bell: One last question. In respect of this complainant and these actions and the board's actions, has the board ever received a legal opinion on whether or not the actions of the board and the decision to terminate were or are judicially reviewable?

Mr. Boukouris: We did. At the time this was going on, the assistant general manager for the liquor control board was consulting over the telephone with the firm's labour solicitors, whom we have on retainer and normally use. I can only surmise that if the case proceeded that way, then they felt we were justified. We felt at the time the termination was justified. Subsequent to that, we went to the Attorney General's ministry to see if they felt we had a case for dismissal and they agreed with us that we did.

We felt we were on firm legal ground. We had consulted our own labour lawyers as to whether or not this was a case that would justify dismissal and we had been assured orally that it would. We normally consult the solicitors over the phone. We have the same firm that we use who are familiar with our collective agreement, and our staff--

Mr. Bell: I am not talking about grounds for dismissal now. I am talking about the process that you used leading to the decision to terminate. Have you ever sought and have received a legal opinion on whether that process is judicially reviewable?

Mr. Boukouris: I am not quite certain I know what you mean by judicially reviewable. We were told that it was an appropriate procedure. Our solicitors never suggested that it was not. If we had received a legal opinion that this was not an appropriate process, we would have used another one.

Mr. Bell: Did you seek one?

Mr. Boukouris: No, but we did tell our solicitors what we were doing and all the documents were there. They were fully aware of our process, because the process we used for this individual is one that between the two boards is probably used 100 times a year and our legal cases are all reviewed by our law firm, including the--

Mr. Bell: I am finished. Thank you.

Mr. Shymko: May I have a supplementary on the last point that was raised? Just one, if you do not mind, John.

I understood you to say the solicitor had an opportunity to request a hearing with witnesses. According to the notes we have, on page 14, the solicitor's request to have a full hearing, including the examination of witnesses, was refused by the board.

Mr. Boukouris: Yes. After this hearing, in which I was involved, the second solicitor acting for the complainant apparently wrote to the then chairman wanting to appear before the discipline committee and was told it would accept a written submission, but I understand he was told its practice was not to have in-person interviews with a complainant. That was the process I was describing to Mr. Bell when I said the discipline committee took written submissions from both sides.

Mr. Shymko: But you had no objection to having witnesses examined by the solicitor?

Mr. Boukouris: No.

Mr. Shymko: I am sorry. I came in late and I was not sure.

Mr. Poirier: We have had two different processes involved here: the collective agreement, which we have seen about, and the Manual of Administration. As I understand it, you were following the collective agreement from the beginning to the end.

Mr. Boukouris: Yes. The arrangement we had then, and still follow in a sense, was that we followed the Manual of Administration everywhere where it was practicable. Where a procedure was already laid down in the union collective agreement, that took precedence, and still does.

We have an arrangement with the ministry. There is a memorandum of understanding signed between the board and the government indicating that we follow the Manual of Administration but that where there is a conflict or where a procedure is laid down in the collective agreement, we follow that.

What this means in personnel matters is that a procedure is laid down in the collective agreement, which applies only to bargaining unit employees. Since there is no collective agreement involving management, volume 2 of the Manual of Administration only would apply.

Mr. Poirier: We read in our notes that at that time you were voluntarily following the Manual of Administration and that now, if I read well, you are strictly adhering to it. Why would there be a change?

Mr. Boukouris: What happened was that, subsequent to this period, the government had a policy of what it calls scheduled agencies. There are schedule 1 agencies, which we are,

which are obliged to follow the manual. There are schedule 2 agencies, which are considered to be nonregulatory and a little bit more at arm's length from the government, and they are not obligated to do so.

At that time we in the control board were not in the system of schedules. We used the manual because it was a good guide and a way of avoiding disputes. We always followed it in financial matters because it is a good accounting guide. It was a desirable thing to have the manual apply. We were not under any formal obligation to apply it, although we did so voluntarily.

Now that we have been placed under schedule 1, there is a formal obligation. There is a memorandum of understanding signed by the board and the Management Board of Cabinet that says we will follow it in a formal agreement, except in cases where the collective agreement applies.

Mr. Poirier: So it is not an implication that you follow it more now than before, or differently.

Mr. Boukouris: No. The whole government arrangement for boards, commissions and crown corporations has changed in the interim.

Mr. Poirier: Okay. If I read you well, Mr. Blair, you mentioned that if you had to do it all over again, you would do it exactly the same way.

Mr. Blair: I would say very much, having in mind the welfare of the individual involved as well as the procedures.

Mr. Poirier: Right. I do not know if you can answer this. When the second solicitor came on the scene, being new, he obviously had to start from scratch as opposed to starting where the other had left off. He asked for a full hearing. Can you tell us why he would not have been able to have had that?

Mr. Boukouris: I assume the then chairman informed him that the procedure then in place was not to have hearings with individuals, but he could make a written submission. I believe the file indicates the letter that went to the complainant stated he could make a written submission to the discipline committee but it would proceed without a submission from him if it did not have one. That was the policy that applied then across the two liquor boards.

2:30 p.m.

Mr. Poirier: Would you say the disciplinary action you took against Mr. L was any different from disciplinary action you might have taken against other employees who faced similar allegations?

Mr. Boukouris: No, I do not think it was. Every case is individual.

Mr. Poirer: I fully agree, but I am talking about similar cases.

Mr. Boukouris: Out of the nine, I think six resigned, as he did. I think we had one case where there was a lengthy suspension. There was a spectrum of cases. He was in the majority, having been allowed to resign.

Mr. Poirer: Did the employees know that if they were caught doing these kinds of things that were alleged, they would be facing dismissal? Did all the employees and inspectors know that?

Mr. Boukouris: They would virtually have to know that, because the board had proceeded criminally against some of their colleagues, and some had been suspended without pay. It was clear that the board regarded it with extreme seriousness, I would say. Whether a dismissal would come out at the end, no one could say.

I did not know when this individual appeared before me that there was not going to be some explanation that would lead me not even to go to disciplinary action. That was the purpose of the hearing. At that stage of the game he would not know, nor did I, that it might lead to a dismissal. But the employees were all very well aware of the seriousness of what would happen in these kinds of circumstances. We had people taken out of the office in handcuffs in the period immediately preceding this.

I was amazed in this case when I conducted the second investigation--at that time the results of the first investigation were filed, and months had passed; they had gone to an individual who himself was charged, so there were reasons why he probably would not make public these kinds of things. When I had the investigation redone, I was absolutely flabbergasted to find that this employee, 10 months later, in spite of a colleague having been arrested during that interval, had apparently continued the same behaviour. I never anticipated that.

Mr. Poirer: When the two inspectors went to the restaurant to get the letter from Mr. J, was that standard procedure, such as they would do for all inspectors they might suspect?

Mr. Boukouris: In a case where a complaint comes from the public, yes, they would go to the complainant. The board generally avoids proceeding with an anonymous complaint. However, when a complaint like that is received from an individual, we try to get it confirmed.

Mr. Blair: May I just make an observation? The employees of the Liquor Control Board of Ontario and of the Liquor Licence Board of Ontario are all on the same contract. However, the LCBO is on a different schedule of the Manual of Administration than our board. Sometimes that causes a little confusion.

Mr. Callahan: I want to clear up something about this personnel manager, I believe it was, who is alleged to have made a threat to the complainant. Do I understand you and the chairman to say that this man was absent from the country?

Mr. Boukouris: No; I was absent from the country. There

was an indication that I had pressured a man into resigning, but the fact is that I was away. I was in Europe during all the period when there was any suggestion of disciplinary action. No decision to dismiss him or to do anything with him had been made while I was there. I would not have pressured him into resigning, because I was pressing for a dismissal.

There is a letter in your file from me to the personnel manager, dated in June--

Mr. Callahan: June of which year?

Mr. Boukouris: This is June 1979. What I said was, "Unless it can be demonstrated to me that the facts are not either as stated in the investigator's report or that the explanations given at the hearing can be replaced by more plausible ones, I do not wish these individuals"--there were two--"to continue in any position of trust in any area for which I am responsible." That was and remains my position. In the end, the board agreed with me in one case and not in another.

Ms. Bohnen: What is the date on that?

Mr. Boukouris: June 28, 1979.

Mr. Callahan: So you actually had a communication from the complainant of alleged pressure being placed on him. I note one of the statements made is that the lawyer he finally got never complained about the pressure. However, you did have notice well prior to that lawyer writing his letters, did you not?

Mr. Boukouris: No, I did not. The first suggestion I had that he had been pressured came from the Ombudsman.

Mr. Callahan: I am sorry.

Mr. Boukouris: This is simply a letter of recommendation from me asking for dismissal--

Mr. Callahan: What I am trying to get at, and I cannot find the name of the person, is that the allegation is that pressure was brought to bear on the complainant. Who was that allegation against? Was it against you?

Mr. Boukouris: It was against me and the personnel manager.

Mr. Callahan: The personnel manager is the one who witnesses claim they heard--is it not?

Ms. Bohnen: No.

Mr. Callahan: Who is it they are claiming they heard?

Ms. Bohnen: The personnel manager admits that. He told us that after the board decided to seek termination of Mr. L's employment by dismissal, he was instructed to ask for his resignation instead. The allegation that someone was overheard

threatening him at the investigative hearing is an allegation against Mr. Boukouris.

Mr. Callahan: Is he saying he was not in the country at the time?

Ms. Bohnen: He was in the country, as I understand, at the investigative hearing; it was after that he was out of the country. There is no allegation against him during that period of time.

Mr. Boukouris: There was no question then of a resignation that I am aware of.

Mr. Callahan: In the material that was received, has there ever been a letter received or any attempt to obtain a letter from the lawyer who was appearing for the union at the initial investigative hearing? His name has been put forward; I do not wish to repeat it again, if that is a rule of the game. However, has there ever been a letter to say yea or nay to the fact that he was there? That is a very essential item. The complainant says he did not have a lawyer.

Ms. Bohnen: There is no question that representatives of the union, including a solicitor employed by the union and an articling student from the Ministry of Labour, were there. They had not been retained by the complainant. They were there because they had been notified by the board that this investigative hearing was to take place. They were not his representatives except in so far as he was a member of the bargaining unit and the collective agreement required that a union representative appear.

Mr. Callahan: There is no question that there was a lawyer there, and I think the complainant's statement is that there was no one there to represent him per se.

Ms. Bohnen: He has said his lawyer was not there, precisely.

Mr. Callahan: I note that in a letter there were words to the effect that the evidence of these two investigators, which I gather was looked at by the boards and on the basis of that a decision was made, was viewed as being good, solid evidence because they had appeared before the board on numerous other occasions. Because of their professionalism and because they had appeared before the board on numerous other occasions, that was the reason reliance was placed on their investigation. Is that correct?

Mr. Boukouris: They were long-term employees who professionally investigated. They were former police officers hired for their police experience.

Mr. Callahan: Am I correct that these two gentlemen also had carried on their proceedings together for some considerable period of time?

Mr. Boukouris: They were long-term employees who before that worked for the Ontario Brewers' Institute as investigators--one did, and the other one was a Peel region police officer.

Mr. Callahan: At what you call your initial investigative hearing, I gather you were looking to get some acknowledgements from the complainant.

Mr. Boukouris: Not necessarily acknowledgement. "Explanation" is the word.

Mr. Callahan: Let us say he had said to you, "I do not intend to tell you anything." What would you have done?

Mr. Boukouris: At that stage, I suppose we would have had to conduct further investigations. At that stage, I would have probably had gone to the police. However, it did not happen; it is hypothetical. At that stage I would have had to go back to the board and say: "I have these investigators' reports. The employee declines to offer any explanation." I would suggest to the board that it let the police deal with that as it was already dealing with a branch with a lot of other employees.

2:40 p.m.

Mr. Callahan: This is hypothetical, but I would like to know what the practice is. If he had said to you, "I have a right to remain silent, and I intend to do so," I gather you would have concluded that investigative hearing and gone to the police.

Mr. Boukouris: In a case such as this. These were unusual disciplinary cases. Most disciplinary cases you come up against concern absenteeism, drinking on the job or something. In this case we were dealing with a violation of the Criminal Code. At that stage, I would feel we did not have within the board any means of carrying on with our own report. I would have sought some advice from the board or its solicitor. I would suspect my inclination would have been to try to get some resources from outside the board, because we were not equipped to deal with it. That did not occur.

Mr. Callahan: Would you also have suspended him if he had not said anything?

Mr. Boukouris: I would have suggested suspension pending the continuation of the process. We decided discipline was warranted. We also suspended his pay; I would note that could have triggered an opportunity for a grievance on the basis of the collective agreement as well, but he did not grieve the suspension.

Mr. Callahan: Recognizing what you have said, did you or anyone else there say to this man, "You have a right not to say anything?"

Mr. Boukouris: I made it quite clear that the only reason he was there was to offer an explanation if he had one.

Mr. Callahan: Did you go one step further and tell him that if he did not offer an explanation, the matter would be turned over to the police?

Mr. Boukouris: No, because at that stage I would not have made that determination; I had until the end of the hearing.

You are asking, what would I then have recommended to the board? During the period of the hearing, I would have just put an end to it. I have done that on other occasions when we have had an investigative hearing. I have also had subsequent cases in which an individual has said he does not want to tell me anything; we have just adjourned the hearing.

The whole purpose of having an investigative hearing provided for in the collective agreement is to have an informal way, because it sometimes happens there are acceptable explanations. There are very few cases like this that go forward in such a formal way and become a difficulty.

Mr. Callahan: Do you recall distinctly telling this man he had a right not to say anything at all?

Mr. Boukouris: Oh, yes. He was certain of that. It was made very clear to him that speaking to me was a voluntary matter. He volunteered himself and made no effort to deny the allegations.

Mr. Callahan: However, there is a distinction. You are saying you told him it was simply a voluntary matter. What I am asking is, did you distinctly tell him he had a right to say nothing at all?

Mr. Boukouris: Yes.

Mr. Callahan: And it never went beyond that stage?

Mr. Boukouris: He did not decline to speak to me. In other words, he did not have to offer any explanation if he did not wish, and he knew that. He did.

Mr. Callahan: All right. Thank you.

Mr. Philip: Could I ask a supplementary on that? Why would you not have gone to the police in any case?

Mr. Boukouris: At that stage we were in a difficult situation already. We wanted to deal as gently as we could with the employee; he was an older man. It was an effort on our part to try to deal with it as easily as we could. The other cases before the police were more severe than this one appeared to be, on the face of it and with hindsight.

When we looked at the facts, it was indeed a disciplinary matter, but it seemed that it probably would be best dealt with internally. We probably could have gone to the police. As things have developed, perhaps we would have been better to do that. At the time we were dealing with it, it seemed to be a staff disciplinary matter.

Mr. Philip: You went to the police in all the other cases, did you not? Or did they lay charges on their own?

Mr. Boukouris: No. What happened was that some allegations of a more serious nature were made against other employees; the others that led us to call the police were

allegations that people were actually paying bribes to receive licences. The kind of allegation in this case was a situation of accepting--I think there is a distinction to be made.

In the other cases, once the police came in, they laid charges in matters identical to this individual's case. As you know, when the police are called, even though the board asks them to come, it is then their matter to deal with; you cannot control how the police conduct their affairs. At that stage we did not know which of the employees the police would try to charge in the end. They had already charged some when we dealt with this individual. There was no way for us to control the police investigation.

Mr. Pierce: Mr. Blair mentioned some figures that were touched on again by Mr. Philip, regarding the number of people who actually were involved at that time. Could we have that again?

Mr. Blair: Nine.

Mr. Pierce: And the dispositions of the nine?

Mr. Blair: Just a minute. Six resigned, including the complainant in this case. Two of the six took early retirement; they had put sufficient time in to enable them to get a pension. Two were reinstated. They were all suspended without pay. Two were reinstated by the grievance settlement board with a full payback from the time they were suspended, which was 21 months or something, a year and considerably more. One is still with us and one has passed away since. Another person, who is alluded to in the report to the Ombudsman, was suspended for 90 days without pay.

Mr. Pierce: Okay. Following along, you mentioned the complainant in this case was given the usual one week's severance pay for every year of service but you did not explain how you came about giving him his car at a reduced price.

Mr. Blair: As I understand it, he paid--was the car leased?

Mr. Boukouris: It was a leased car. He bought it from the leasing company.

Mr. Blair: There is a markdown on it.

Mr. Pierce: Was it not a car owned by the Liquor Licence Board of Ontario?

Mr. Boukouris: No, the LLBO does not own any vehicles. It was a leased vehicle and he bought out the lease. The effect was that it was a good price for a used car but it was the existing valuation of the car.

Mr. Pierce: All right. The way it comes out in the material, it was really a deal offered by the LLBO for the complainant to get a good buy on a good car.

Mr. Boukouris: The board has offered these vehicles for sale to employees. Most of the inspectors have leased vehicles. It

has been a practice of the board that when the lease comes to an end or a vehicle is no longer required, if the employee wants to keep the car as his own, he can pay to the lease company what we would have received for the vehicle. The board gets the same number of dollars it would have got anyway, but in effect there is no markup on the deal. The employee gets a better price but it is the same price the board would get for the car from any buyer.

Mr. Pierce: The only other question I have is, now that we know the complainant was unemployed for two years following his suspension, would he be entitled to unemployment insurance for any part of the two years he was out of work?

Ms. Bohnen: I would think he was.

Mr. Pierce: Did he collect that money? It was mentioned how much money he had received in that period of time.

Ms. Bohnen: I do not know whether he received it or not. I would think he did receive unemployment insurance payments.

Mr. Pierce: That is all.

Mr. Philip: If I can raise a point of order, because I think it is important, it seems to me this is a terribly complicated case and I want to deal with it in its entirety today; at the same time we have the Workers' Compensation Board waiting. Would it not be fair to the WCB people to ask them to accept a rescheduling so that we can deal with this properly today, while all the information is fresh in our minds? Can we dispose of this case today and not have these people waiting outside for a hearing that will probably not occur today?

Mr. Bell: Some additional information to help you decide that point, the WCB is scheduled to appear before you again tomorrow morning and again Monday morning.

Mr. Chairman: Monday afternoon.

Mr. Bell: I am sorry, Monday afternoon. Where is Niki Catton? She is outside with Mr. Warrington and other board representatives. They should probably hear this. It is only administratively fair that they do so.

It would seem to me we can find that extra hour and a half we would otherwise use to deal with the Workers' Compensation Board this afternoon, either tomorrow or Monday and at the very worst Tuesday morning. Other than the inconvenience to the board members, who have already come and have been here since 2 o'clock, it can be done.

2:50 p.m.

Mr. Warrington, I will tell you what is being discussed. As usual, my predictions on time are wrong. The committee is going to go beyond three o'clock with this. The subject for discussion right now is that the committee should continue to deliberate in camera as soon as it has heard this matter. The suggestion has

been made that we start fresh tomorrow morning, rather than have you and your colleagues cool your heels outside or here for the next indeterminate period. Because we are seeing each other tomorrow and Monday, we probably will finish all those.

Do you have any problems with that suggestion? It is probably preferable in terms of what everybody has to do back at one's offices.

Mr. Warrington: No, I have no problems with that.

Mr. Bell: My apologies for bringing you down. I thought we would finish it, but we did not. It just shows you how consistent I am in my scheduling.

Mr. Warrington: Sir, we have been here before.

Mr. Bell: That spoke volumes, yes. Thank you. Please take my congratulations back to Mr. Alexander. Thank you.

Mr. Chairman, I guess if the decision has been made now, we will let Parkinson's law take over.

Mr. Chairman: The member for Prescott-Russell (Mr. Poirier) has a supplementary.

Mr. Poirier: Pertaining to these two who were reinstated, would you know if the allegations, the charges they faced, were similar to the ones Mr. L faced?

Mr. Blair: No, they were charged initially with acceptance of benefits and uttering. When the court case came on, the charge of accepting benefits was withdrawn, and they were convicted of uttering.

Mr. Poirier: Straight uttering.

Mr. Blair: Yes.

Mr. Poirier: Which would be, in your eyes, a very serious offence too?

Mr. Blair: Oh yes.

Mr. Poirier: And they were reinstated?

Mr. Blair: The union took their case to the grievance settlement board and there are the results.

Mr. Callahan: With reference to the comment that was made about receipt of unemployment insurance benefits, could I ask either Mr. Bell or yourself, is that a matter that is considered in terms of reducing the settlement?

Mr. Bell: The Unemployment Insurance Commission is now subrogated to all wrongful-dismissal recoverers.

Mr. Callahan: That is what I am getting at. If we make our award here--

Mr. Bell: It is his problem.

Mr. Callahan: I want to be sure about this. We do not have to take that into consideration and deduct that from the--

Mr. Bell: No, it is like OHIP.

Mr. Callahan: That is what I thought.

Mr. Bell: It is his problem.

Mr. Callahan: I thought perhaps that helped my colleague, because he was looking at that in terms of a deduction from a settlement.

Mr. Bell: There is a problem of income tax, which is his problem and not ours.

Mr. Pierce: A question for clarification--

Mr. Chairman: The list now is Philip, Smith, Shymko and Henderson.

Mr. Philip: I do not mind if Mr. Smith wants to go ahead.

Mr. Smith: I thought Mr. Blair said this morning that the two people who were reinstated were charged with almost the same charges as Mr. L. I am just trying to clarify this. Did you say that if he had applied to the grievance settlement board, he would be apt to get reinstated as well?

Mr. Blair: No. What I suggested was that it is a puzzle to the board why he did not pursue this at the grievance settlement board, especially after its treatment of the application for reinstatement by two of his colleagues.

Mr. Smith: You did not actually make the statement that he may have been reinstated?

Mr. Blair: He did not apply.

Mr. Smith: I know he did not apply, but I wondered if you had made the statement that if he had applied, he may have been reinstated.

Mr. Blair: I said it was a puzzle to us why he did not go there anyway, in the first place, especially after their treatment of two of his colleagues. But the union was not supporting Mr. L, that is the--

Mr. Smith: That is the baffling thing right there.

Mr. Callahan: Did this reinstatement of these two other employees take place before or after the time his rights had run out under the act?

Mr. Blair: The reinstatement had taken place in the early part of 1981. The grievance had been launched well in advance of that.

Mr. Boukouris: The grievance had been launched at the time of this case.

Mr. Callahan: So he would have had knowledge of their reinstatement before the time ran out on his opportunity to grieve.

Mr. Boukouris: He would not have known the outcome, but he knew that the union had grieved on behalf of his colleagues.

Mr. Callahan: There is a very distinct difference between the two, and that is why I would like to pin this down. It is fine to say he would have known the result, but if the result was known after his right to seek a grievance had expired, that really is a total irrelevancy. I would like to clarify that in my own mind in making a decision.

Mr. Boukouris: He would have known only that the grievance had been made, but the decision was subsequent to that. He would have known that his colleagues had gone to the grievance settlement board.

Mr. Callahan: But he did not know the results. From what the chairman is saying, I think the inference is, why would that not spur him on to bring a grievance. I got the impression from that that you could infer something from his failure to do so in knowing they had achieved the result they had. I just wanted to clarify that. If it happened after his rights had expired, what difference does it make? It is irrelevant.

Mr. Philip: I have a problem with the fact that we have two diametrically different versions of the truth. It is more polite than saying that somewhere in this problem somebody is lying, and I am not saying who at the moment. That is the problem we are facing. Either he was pressured to resign or he was not pressured to resign, and in the pressuring his rights were taken away or they were not taken away. That, to me, is the issue at the moment.

You gave us a line that was almost a throwaway, and I just want to catch it to make sure I heard it. Did I hear you say the union approached the board in some way and suggested that perhaps the best solution would be for him to resign?

Mr. Boukouris: When this matter came up before the Ombudsman and I tried to sort out what had occurred, because my direct dealing with the matter as the man's supervisor was only at the investigative hearing, I discussed the matter with the union shop steward, who was present at the investigative hearing and who was acting on behalf of [name withheld] through his union role as a shop steward. When this suggestion was made, I asked him if [name withheld] had complained to them about being pressured to resign, because I was trying to see whether or not this really had occurred.

Mr. Bell: I have to interrupt for a moment and do something that Hansard does not like. There have been two references to the individual's name in the last 15 seconds. Would Hansard delete those references, please?

Mr. Philip: Can you just back up and start the answer again?

Mr. Boukouris: I am so familiar with it that it is hard not to do it. I am sorry.

Mr. Bell: We used to fine you cookies when you did that.

Mr. Boukouris: I had not heard such an allegation before, so, to try to get to the bottom of it and see if this had indeed occurred, I asked the union representative who had been looking after this case and others whether the individual had complained to him, even if he had not come to management, that this had occurred. He told me that when the individual and the union knew he was to be dismissed, the complainant asked the union if it would approach us on his behalf about whether or not the board would accept a resignation before the actual termination procedure was carried out. That is my only knowledge of how it occurred.

Mr. Philip: Was a notation made on Mr. L's file or is there anything in a document form from the union, on a personnel file or anything else you could get your hands on and present to the committee that would document that, at least in the union's mind, he had approached it and suggested himself that he should resign rather than be fired?

Mr. Boukouris: No. I simply asked this individual, and when we had a meeting with Dr. Hill and his staff, this individual from the union made the statement that the suggestion for the resignation had been the employee's.

3 p.m.

Mr. Philip: Were there witnesses to that statement, or was it a private conversation between you and the union rep?

Mr. Boukouris: The people at this table were all there.

Ms. Bohnen: If I was there, I do not recall it.

Mr. Philip: I have not seen it in any of the documents.

Ms. Bohnen: I would just like to remind you, gentlemen, that this synopsis which I tried to present this morning was submitted to the board quite some time ago and the board agreed with us that this was an accurate reflection of the facts of the case. It is important that you remember that.

Mr. Philip: If this was submitted to you, why would you not have said, "Wait, there is an additional key factor; the union approach does not suggest a resignation in the first place." I am sure you read this synopsis.

Mr. Boukouris: We were all in the room together. I think the chairman and Mr. Granum were there. That is what occurred.

Ms. Bohnen: Our recollection of the facts is simply different and as it appears in the synopsis.

Interjection.

Mr. Boukouris: It was, and it remains, my understanding that this is where the resignation indication came from. My position was, and it remains, that dismissal was appropriate. In my mind at least, there was never any thought of resignation. When I came back into the office, it had all occurred.

Mr. Callahan: I am sure I have seen in this report--and maybe counsel can help us in this regard--a statement by Dr. Hill that the union did not do that. Am I correct in that respect?

Ms. Bohnen: I do not think the union did that.

Mr. Callahan: I think it is recorded in the facts. Maybe you can show me where it is; I have seen it, but I cannot find it.

Ms. Bohnen: Just a minute, I can easily find it in the report.

Mr. Callahan: I think it is at page 39. No, I am sorry, I thought it was.

Ms. Bohnen: If you look at page 41 of the report in your material, the second full paragraph down, about halfway through it says, "The board met on July 23, 1979, and decided to dismiss the complainant based on the findings....It would appear that the board also decided the complainant would be given the option of resigning."

After that, although this paragraph does not state it, the then personnel director was charged with the task of contacting the complainant and inviting or obtaining his resignation. That is where it came from.

Mr. Shymko: Is it possible to obtain some statement from the individuals to whom you refer? We have three witnesses who admit that some statement was made. We have the Ombudsman's office indicating it does not recall such a statement being made. Could we have a statement from the particular individual?

Ms. Bohnen: I must say I am not sure what the statement is, even. None of us recalls the union representative, at this meeting to which Mr. Boukouris refers, saying that at the time of which they were speaking, more than three years before, the union suggested to the board it would be a good thing if Mr. L were permitted to resign. We have no recollection of that.

Mr. Boukouris: My understanding of it was--

Mr. Bell: Wait a minute; so what? This case is not going to stand or fall on whether the union suggested he resign, he suggested he resign or, with respect, Mr. Boukouris suggested he resign.

The fundamental point of your case is that this man was not dealt with in an appropriate way. We know now that the board had made a decision to fire him, which was known to him before he

resigned. Speaking for myself, and to the extent that I have to assist the committee, that is enough. Mr. Shymko, I really think it is a distracting issue.

Mr. Callahan: With respect, in order to arrive at that decision--and that is the unfortunate nature of this beast--had there been a hearing, with examination and cross-examination, particularly since the decision was based on a question of credibility, all this would have been unnecessary.

If the decision of this committee were to order a new hearing, it would be an impossibility because of the practicalities of time and the fact that witnesses are dead. To get to the nub of that, for myself anyway, there has to be something to allow me to examine it independently. It probably would not be the way we would do it if it were fresher and we could have ordered a new hearing to determine the question of whether the complainant was fairly treated or whether the facts were as related by the board as opposed to the complainant.

I agree with you that we should not be involved in trying to retry the case, but the fact is that we cannot send it back for a new hearing to arrive at that decision. You have to find something to decide which approach you take.

Mr. Bell: My point is that if we agree with Dr. Hill--I believe the board does not differ with that--that the central issue, the key issue, is whether he was dealt with in a fair way, then it is not necessary to decide who initiated the suggestion to resign.

Mr. Callahan: I will accept that.

Mr. Bell: Be it the union, the individual or somebody on behalf of the board. The other thing you have, which is not contradicted, is the finding of Dr. Hill that the personnel representative admitted he made that statement to the individual. What you do know is that between that man's ears before the decision was taken to resign was that prospect of a criminal investigation.

Mr. Shymko: Were all the individuals in the nine cases you referred to charged, or was it only three who were charged and six resigned?

Mr. Blair: There were eight out of nine.

Mr. Shymko: Eight of the nine were charged. The only person who was not charged was who? Was it this one?

Mr. Callahan: While you are finding that out, could I clarify something? Is it the practice now that if there is a board hearing that the complainant is entitled to have counsel appear and examine and cross-examine witnesses?

Mr. Bell: There was a decision out of the High Court within the last year that said that even though a body is not

required to hold a statutory hearing, where it has adopted a practice of hearing, it has to go all the way, including the calling of witnesses, representation by counsel and cross-examination. It is not a union case, but it is quite clear that you may impose upon yourself the rules of the Statutory Powers Procedure Act. While I am not legal counsel for the board, it might well have to do that now in every case.

Mr. Callahan: I am asking so we are not into this again--

Mr. Shymko: I want to have clarification from the board on point 8 of the synopsis from the Ombudsman, saying that at the time that the investigative hearing was held into the allegations in this case there were various employees of the board who had been criminally charged with accepting benefits, among other offences. I want to know whether the nine cases were the ones that existed at the time.

Mr. Blair: There were six cases. That did not include Mr. L. Five were proceeded with. In one case the individual was very ill. He had his time in, so I guess they withdrew them and he retired. The five were proceeded with in the courts, and there were three convictions on accepting benefits. The two we alluded to went to the Crown Employees' Grievance Settlement Board and had the charges against them withdrawn regarding the acceptance of benefits. They were convicted of uttering.

3:10 p.m.

Mr. Shymko: You are saying that of the nine cases, six individuals were charged with a criminal offence?

Mr. Blair: Yes.

Mr. Shymko: Originally, you mentioned nine cases.

Mr. Blair: That included others who were in difficulty, including Mr. L.

Mr. Shymko: Of these six people who were charged, how many of them resigned?

Mr. Blair: Four. Two took retirement. The charges were withdrawn against one, but the other one in the Ottawa area was charged and he took an early retirement too. He was charged and convicted. The two other people who had responsible positions in the inspection department all resigned.

Mr. Shymko: So when you speak of the six resignations you mentioned earlier, some of these were resignations following the laying of charges?

Mr. Blair: Yes.

Mr. Shymko: They were not resignations without any charges being laid?

Mr. Blair: No.

Mr. Shymko: These were resignations following criminal charges?

Mr. Blair: Yes.

Mr. Shymko: In other words, it was quite different from this situation here obviously?

Mr. Blair: There was another one who resigned rather than--

Mr. Shymko: Two were reinstated after a suspension of 21 months and one was suspended for three months. These three were charged, obviously?

Mr. Blair: The one who was suspended for three months was not charged by the police. That was internal.

Mr. Shymko: Were the two who were reinstated after a 21-month suspension charged?

Mr. Blair: They are the ones who were charged with accepting of benefits and uttering. The acceptance of benefits charges were withdrawn when the case came to court, but the charges of uttering proceeded and they were convicted.

Mr. Shymko: The Ombudsman's office says those individuals who were charged included the director of inspections and his assistant.

Mr. Blair: Yes.

Mr. Shymko: Were these the two who were reinstated later on?

Mr. Blair: No.

Mr. Shymko: These are the two who resigned subsequently?

Mr. Blair: Yes.

Mr. Callahan: They took early retirement, those two.

Mr. Blair: I do not know what the details were of that. They both retired. I guess they had the service.

Mr. Shymko: These things were happening at approximately the same time as the complainant's particular case was being heard?

Mr. Blair: The one we are dealing with today?

Mr. Shymko: Yes.

Mr. Blair: Yes. Just in advance of it.

Mr. Shymko: It was just in advance of this?

Mr. Blair: I think these people had charges laid in March or April 1979. This came on in June, after Mr. Boukouris took over the responsibilities as acting director of inspections.

Mr. Shymko: Do you recall if there was any negative publicity? Was the thing publicized in the papers?

Mr. Blair: Sure, it was.

Mr. Shymko: Quite substantially? You seem to smile.

Mr. Blair: For some strange reason, as I heard it, channel 9 was taking pictures of these people when they were taken out to the paddy wagon. We hoped that would be a deterrent to others, but in some cases it did not work.

Mr. Shymko: Do you think this publicity was negative to the agency? No institution today wants to be publicized in the media as full of corruption and having inspectors who are dealing with individuals in a very unethical manner. Was the board concerned about its image?

Mr. Blair: I was not there then, but when I came on the scene I was warned in advance that there was a little tidying up to do down there.

Mr. Shymko: In other words, an internal resignation quietly done within the confines of the board and its procedure would not probably hit the fan--pardon me.

Mr. Blair: I heard you the first time and I think you are right.

Mr. Shymko: It would probably be less condusive to that type of negative publicity. The preferred thing would be to speak to the individual and have him resign. It would not be publicized and that would certainly be to the benefit of the board, would you not say?

Mr. Blair: Yes. That is what I tried to convey in my earlier remarks.

Mr. Shymko: Can we conclude from the questions that were raised by the members of this committee the reason you did not charge him was that his resignation obviously had something to do with trying to keep the name and the reputation of the board following all this publicity? You did not want another case to add to the list.

Mr. Blair: I was not there at the time. As I understand it, and I have talked to the union reps on this case myself and with others, I think they were also being as fair as they could to the individual, having due regard to the fact he was in his late 50s. Also, there was the fact that if he wanted to be relocated in another area of employment, the board would make it as easy as possible for him. That was the advice he got from the union as well, I understand.

Mr. Shymko: The board would make it as easy as possible for him. At the same time, this would be in line with the board's reputation in trying not to add more to the media publicity, which was an irritant, I am sure, at the time.

Mr. Blair: I think there is a lot to be said for doing things internally without all the news media looking at you.

Mr. Shymko: May one conclude that considering an agency's concern to keep its name clean, it would be tempted to use some form of pressure to have a person resign rather than to dismiss the person?

Mr. Blair: I do not think I would be right in trying to answer that question. We are all human beings. We have certain feelings for our fellow human beings. If some of them go astray, we try to straighten them out and do it the best way possible.

Mr. Shymko: But you do admit there was a concern about the publicity and the board was trying to avoid it as much as possible?

Mr. Blair: Oh, yes.

Mr. Shymko: And that laying charges would be simply adding to that negative publicity?

Mr. Blair: I am sure this complainant knew full well what had taken place with his fellows, including his superiors.

Mr. Poirier: I think somewhere in there it was mentioned that the then personnel manager had admitted to you in your investigation that if Mr. L did not resign, he would or could be faced with charges.

Ms. Bohnen: Yes.

Mr. Poirier: Returning to that, I would like to know whether the board asked the then personnel manager if that was true? Did the board accept that the manager did say that to Mr. L?

Mr. Boukouris: We have no way of knowing what he might have said. Knowing how the police investigation operated, the board would neither be able to have someone charged nor prevent him from being charged. Our experience in the other matter was that once the police were on a case we were never consulted as to what charges, if any, would be laid. In fact, in some cases after a man was arrested, a month passed before the board was officially informed what the charges were. All that a personnel manager could say would be that there was clearly a risk of that when others had been charged.

Ms. Bohnen: He could also say that he would turn material over to the police, which is what we believe he said.

Mr. Boukouris: That could happen. But whether or not they would be charged or whether the police would proceed with it,

is not something any agency has control over. Once the police are proceeding with a case, we would have no influence over it.

Mr. Poirier: I fully realize that, but what I am trying to find out are the exact words the then personnel manager would have said to Mr. L at that point. Do you have any idea?

Ms. Bohnen: What we believe he said was that unless he resigned, the material would be turned over to the police and he could be charged. That is contained in the synopsis. I believe this man is still a board employee.

Mr. Boukouris: No.

Ms. Bohnen: Then he is not. The board has known that we presented that evidence.

Mr. Poirier: Right. No matter what that then personnel manager would say to Mr. L, it would be in an official position. If the then personnel manager did say something like that, it would reflect on the board. The board would have responsibility for whatever the then personnel manager would say or would not say to Mr. L. I think we could agree on that.

Mr. Boukouris: Yes.

Mr. Henderson: I want Mr. Bell to be present for the second of my two questions. Could you take the next person on the list and come back to me?

Mr. Baetz: In the absence of our legal counsel here, I I heard the comment about the union's involvement in this not mattering much strictly from a legalistic point of view. I am sorry Mr. Philip is not here as well. I am not a lawyer but I would think the union's involvement in this matters a great deal.

3.20 p.m.

I think we should be very sure and we should hear once again from the Ombudsman and from the board precisely what the union's role was in this. Did they convey to you that they were not ready to support this particular case?

I am sorry if I missed this, but the board and the Ombudsman's office had a meeting, apparently, at which time there was no union member present.

Mr. Blair: There was one.

Mr. Baetz: There was one present. There seems to be one unanswered question then. Did the union representative at that meeting make it clear that the union had more or less washed its hands of its particular member, Mr. L in this case? Was that made pretty clear at that meeting?

Ms. Bohnen: At what time? What meeting are you talking about when you say--

Mr. Baetz: I am talking about the meeting you and the board apparently had. I do not know when, a year ago or whenever it was.

Ms. Bohnen: That meeting was relatively recent. By the time of the meeting, I am sure you realize there was no action the union could have taken on this man's behalf.

Mr. Baetz: But the union would have a memory on this and would have to say either, "At the time all this happened, we were ready to defend our member," or, "We felt there was not a case there," and wash its hands of it. I think this is very important, even though in a strictly legalistic way it may not matter much.

Mr. Blair: Mr. M, the union representative, was there at our request.

Mr. Baetz: He was at the meeting you had with the Ombudsman's office.

Mr. Blair: Yes.

Mr. Baetz: When did this occur?

Mr. Blair: Last November. He was there as a resource person to inform both parties of the union's position all along in connection with Mr. L.

Mr. Baetz: He recalled very clearly what the union's position had been in respect to Mr. L?

Mr Blair: Yes.

Mr. Baetz: He conveyed this quite clearly at that meeting?

Mr. Blair: I am not going to say yes or no to that, but the very fact that he came with us at our request to have a dialogue with the Ombudsman and his staff would indicated quite clearly what his position was because he was active in the union at that time and has very clear memories of what took place.

Mr. Baetz: Did anybody at the meeting between the board and the Ombudsman ask the union representative what role the union played in this whole matter at the time, or did he just sit there and say nothing throughout the whole meeting?

Ms. Bohnen: I do not recall that he said anything about their stand at the time. We interviewed, during the course of the investigation, every union representative who was at the investigative hearing and asked them whether they advised Mr. L of any course of action and what position they took. At that time their memories were somewhat hazy and they were not entirely consistent with each other.

That is why I said the overall impression we obtained was that had Mr. L said, "Union, I want to make a grievance, do it for

me," they would have done it, but they were not encouraging him to do that. It went so far as one person saying to him, "They have got you cooked."

When the complaint first came to the Ombudsman, it was received directly from the union and what the union had to say then shows how recollections can fade over time. They now say: "At any given moment during that period we were confronted with a large number of members who were in fear of their jobs and their personal reputations and unaware of what rights they were entitled to under the collective agreement and under the Crown Employees Collective Bargaining Act."

"In Mr. L's case, he did not contact us with what happened to him in employment...and we were powerless to carry a grievance forward on his behalf because of the delay."

That is not completely accurate; there were union representatives at the investigative hearings. I think the best evidence we will get on what position the union took was that had he pressed his case and asked for its assistance, it would have given it, but it did not encourage him to press a grievance.

Mr. Blair: Mr. Baetz, may I ask a question here before I forget? May I ask the solicitor for the Ombudsman's office who wrote that letter?

Ms. Bohnen: This is signed by the general secretary of the Ontario Liquor Boards Employees' Union and it is dated September 16, 1982.

Mr. Blair: By whom is it signed?

Ms. Bohnen: I do not want to give a name.

Mr. Blair: That was not a trap question. I am sorry. I can get that later.

Mr. Baetz: It is like alphabet soup.

Ms. Bohnen: Mr. Q. You are right.

Mr. Baetz: I heard legal counsel say the participation of the union in all this does not make much difference from a legalistic point of view. I accept your judgement on that, but I still think, from a different point of view, the role of the union here is important. I was trying to get a better reading on how willing it was to go to bat for this person.

I am not too impressed by the comment that the union, in effect, said to Mr. L, "You had better forget it and resign because they have you cooked." In any dealings I have had with unions--and I do not say this in a pejorative way at all--even if it thinks the employer has its member "cooked," if it has a feeling an injustice is being done, the union will fight.

I am very much impressed by the fact, without being very precise, that you get the general impression the union did not have its heart in this one.

Ms. Bohnen: It did not because, I suggest, just as Mr. Shymko suggested the board was shy of additional publicity stemming from further charges, the union was equally so. There are lots of news clippings from the day to show it was very leery of its members incurring additional publicity that any additional criminal charges would generate.

Mr. Bell: Also, this poor guy was ninth in line. There were eight ahead of him who were getting some treatments.

Mr. Henderson: I have two fairly brief questions. Did I understand Mr. Blair, I think it was this morning, to say his instructions to inspectors with regard to accepting benefits are to use their discretion? Did I misunderstand him on that?

Mr. Blair: Any time I have dealt with inspectors, collectively or individually, I have reminded them what their responsibilities are and were under the Criminal Code. I have also said, "We have to be realistic about this and from time to time you will find yourself in an embarrassing position where I suppose you have to accept some kind of benefit." The word "discretion" is what I asked them to use, provided they did not have to call on it at the same place very often.

Mr. Henderson: I suppose the question taking shape in my mind is whether--I guess you would not have instructed this particular individual.

Mr. Blair: No. I do not know this person at all.

Mr. Henderson: However, if your instructions capture the flavour of the administration and if he took the same meaning, it seems to me it can be questioned whether the policy was not pretty laissez-faire on the matter. If so, is it fair to use that as the major ground for his dismissal, resignation or whatever, as I think the Ombudsman pointed out having occurred? I guess I am asking that question in a general, at-large sort of way.

I do not know if my second one is a legitimate question, but I found myself curious about the individual who found himself facing the alternatives of resignation, dismissal or charges being laid, which is pretty heavy ammunition with which to face someone. I suppose it is not too surprising that many individuals in those circumstances would opt to resign.

3:30 p.m.

Not having a legal background, I guess the question in my mind is, if he was given advice he would have been better off to resign than to have charges laid, even if it was good advice--or was it a bluff? One can imagine all sorts of reasons why it might have been offered.

Maybe there is another way of asking the same question. Have we heard whether the six individuals who were charged were convicted? I heard a few minutes ago that one of them was.

Mr. Blair: No. Three were convicted of accepting benefits, and all were charged with that. The charges of accepting

benefits were withdrawn on two, but they were convicted of uttering.

Mr. Henderson: This gentleman had not been charged with uttering.

Mr. Blair: No.

Mr. Henderson: So the only charge that was contemplated, I gather, was of accepting benefits.

Mr. Blair: The investigators who were checking out his conduct had reported to the board or to one of the administrators certain activities that he had been involved in that were illegal.

Mr. Henderson: That he was allowed to use discretion about, perhaps.

Mr. Blair: "Discretion" is a word I have used since I have been chairman of the board, and I came on the scene in 1981, well after all these events took place.

Mr. Henderson: Thank you.

Mr. Blair: Following up on what Mr. Henderson said, we take the stance that it is one thing to accept a cup of coffee or a sandwich some place, but it is an entirely different thing when you bring your wife or someone else for meals regularly at that place and not pay for them.

Mr. Henderson: Was there ever such a thing?

Mr. Blair: Let me suggest to you that there is quite a difference.

Ms. Bohnen: I do not think that was alleged.

Mr. Wiseman: I have a question for clarification as a member. I have never sat on this committee before. When I look at the files, I wonder whether I can ask the Ombudsman if he keeps track of the hours that are spent on each case and the approximate cost of what an investigation like this. I look at the number of people here this afternoon and the file that is in front of the lawyer; this has gone on for three years for \$15,000. Just for my own curiosity as a member--

Dr. Hill: We have not done a cost analysis.

Mr. Wiseman: You have not. Would \$250,000 cover all the expenses?

Mr. Shymko: Your per diem is part of it too, you know.

Mr. Chairman: That is correct.

Dr. Hill: We are constantly trying to resolve it all the way down the road.

Mr. Wiseman: I think that justifies our increase in wages, because we are all ombudsmen in our own way.

Mr. Shymko: And no free meals.

Dr. Hill: Mr. Chairman, I was trying to get a comment in regarding Mr. Baetz's query in respect of what happened at that meeting in my office. Of course, it was probably in their office. I was there, of course. I cannot recall the union rep or person there saying anything definitively.

Mr. Philip: That is probably what happens when you get into less affluent offices: you become disoriented.

Interjections.

Mr. Shymko: Or when you enter Mr. Philip's office.

Dr. Hill: All I am trying to say is that the person was quiet. That is all.

Mr. Callahan: I recognize that Mr. Wiseman's comment was made in levity, but I would say that is the price of democracy, Mr. Wiseman, as is the fact that some taxpayers might look at us and what we do and do not do in terms of whether it is worth while. I could not let that go by without coming to the defence of the Ombudsman.

I do not sit on this committee as a regular member either. I recognize it is a very necessary part of democracy, and the costs, in terms of seeing that somebody's rights are upheld, are very incidental.

Mr. Baetz: He also added that he was not complaining; he just wanted to know. That is all.

Mr. Bell: We did do one for \$63, as I remember.

Mr. Philip: If we made less use of Liberal members on the committee, we would save quite a lot of money.

Mr. Hayes: I know Dr. Henderson touched on this question, and I was going to ask the same thing; it deals with the statement Mr. Blair had made in regard to meeting with his inspectors and about using the word "discretion." Do I understand that to mean it is all right to have meals, but you have to be careful where you have them and who you get them from?

Mr. Blair: Are you zeroing in on my comment on that?

Mr. Hayes: Yes, and I am saying that if I were in that meeting, I would read that as a "Be careful; do not go overboard" type of thing and to use some discretion.

Mr. Blair: I think you heard me say, if you were here, Mr. Hayes, that I reminded them what their responsibilities were at the board and what the Criminal Code says about this. But in realistic terms and in a real, live situation we have a lot of

people in the hospitality business who are newcomers to this country, and we all know they have different standards about dealing with those matters. From time to time, rather than create a scene about something, I suppose they could accept some minor benefit--you could call it a coffee or something of benefit--but they were to use discretion. They should not go there regularly for meals or take their families in, as some of the inspectors were doing back in those days, and not paying for them.

I was doing all this in the summer of 1981, after I came on the scene as chairman of the board.

Mr. Henderson: We are evaluating the Ombudsman's decision in the light of information that came to the Ombudsman's office. Am I correct in understanding that there was no indication to the Ombudsman's office that he had taken his wife and family or whatever?

Mr. Blair: I was not using that in connection with Mr. L.

Mr. Henderson: Oh, I see.

Mr. Blair: With some of the others, those were the charges.

Mr. Poirier: Mr. Blair, since there is a danger as to where the demarcation is between minor and nonminor, or discretion and whatever--I mean, discretion can be at the discretion of whoever wants to define the word "discretion"--is there any place where the inspectors have to list the benefits they get, even minor ones, for their own defence?

Mr. Boukouris: Meals that they get and do not pay for. They were under instruction at this time, when I took over there as director, to indicate the meal on their expense claim and to indicate that there was no charge. They were told that if they were offered one, they were to make every effort to pay and that we would pay the expense claim. In other words, we did not want them taking hospitality; we wanted them to pay.

There are always occasions where there is difficulty in doing that, and they were told to put a notation in their diary or on their expense sheet to indicate how the missing meal was looked after, because the board pays for their meals. If they are away at mealtime and they have a meal and it is not paid for, there is to be an entry on the expense claim about why it was absent.

Mr. L's case was a bit different from the normal case, where somebody says, "He is expecting to have a cup of coffee." We had a letter of complaint indicating that he was asking for these things and not paying. It is one thing to accept something that is pressed on you; it is another thing to seek it. I think discretion involves itself in that distinction.

Mr. Poirier: He would seek that regularly, according to your records?

Mr. Boukouris: Yes.

Mr. Pierce: It is like the policeman going by the apple stand. How do you turn down that nice-looking apple?

Perhaps legal counsel could answer something for me. We keep making reference to the fact that somebody has stated to the complainant that if he did not wish to resign, criminal charges could be brought or his file could be turned over to the police. That, to me, does not make any sense because, whether he resigns or not, if the guy has broken the law, criminal charges could still be forthcoming. Is that not right?

Mr. Bell: Except that if you accept the finding that Dr. Hill made, which is that he was told of a choice--"Resign or we will turn the matter over to the police"--then that is not the same, because the expectation is that if the matter is not turned over to the police, they will not know about it and therefore presumably will not pursue it.

Mr. Pierce: Yet according to the information we have and the dates that are here, these criminal charges were already being dealt with in terms of other members of the LLBO and everybody on the LLBO was suspect. In fact, it states that his union was afraid of additional publicity and did not want to pursue this guy's case because other members were already being charged and dealt with in the criminal courts.

3:40 p.m.

Mr. Bell: That is another factor for you to consider, except what would have actually happened is not so important as to what that person perceived was a pressure on him to do one thing or another. This is one of a group of facts you have to consider: the board's decision to terminate; the union's position in the matter, which I think we can accept was one of, "Resign, the jig is up. The goods are on you," or whatever you want to call it; his apparent belief that if he did resign he could salvage something, criminal prosecution, reputation or whatever.

Mr. Pierce: I do not want to pursue this too far, but given that Mr. L. was 59 years old, I am sure he must have been aware of the law enough to know that regardless of whether he resigned or not, he could still face criminal charges.

Mr. Bell: There was a risk. That is fair.

Mr. Philip: The files had been already seized by the police at this time, had they not? Your files had already been seized. He would know that his file and his records were already seized, would he?

Mr. Boukouris: What had happened was that they had executed general search warrants against all our files and had removed a great many. We had reason to believe they had access to his file under that search warrant and had certainly looked at it. What they might or might not have done with it, I have no way of knowing.

Mr. Philip: Did Mr. L. have some reason to believe at this time that his file had been--

Mr. Boukouris: Yes. He would have known that. It was common knowledge at the board that all the inspection branch's files had been examined by the police. He would have known that already.

Ms. Bohnen: There was no evidence the police read his file.

Mr. Boukouris: We have no way of knowing if they read it or not. They executed a general search warrant and had access to them all.

Mr. Shymko: I want to ask the chairman, you were appointed in 1981?

Mr. Blair: Yes.

Mr. Shymko: I guess you have cleaned up the LLBO since your appointment. How many charges were laid last year? Were there any along this line?

Mr. Blair: None.

Mr. Shymko: A year previous to that?

Mr. Blair: I do not know.

Mr. Shymko: In other words, compared to 1979, which was the year all of these charges were being laid, you have seen quite a change?

Mr. Blair: Yes. Another thing, to be fair about the matter, 70 of our personnel went to the fire marshal's office. Our remaining group of inspectors had a very heavy work load to assume. Just because the fire safety function went, does not mean our people did not have an awful lot of work to do. We have been struggling with underfinancing ever since.

Mr. Shymko: In conclusion, what I see is that in the years of the operation of the Liquor Licence Board of Ontario and the Liquor Control Board of Ontario, there was a period of indefinite, unclear guidelines as to what one should do in the case of courtesy. By 1979, you were moving in a clear direction, at least through that seminar and other things, to specifically say, "Look, these are the guidelines. They are reasonable, and that is what you guys should be doing from now on," or else either dismissal, resignation or prosecution--charges will be laid.

In other words, this man was caught in a period of change to the situation now, including the views of the Manual of Administration now. You are in a different category. There have been very positive changes that have occurred.

This man was caught in a period when many things were not clear. I am sure the board was in a very unusual situation of bad publicity. The union was sort of hesitant to support its member because of the negative impact. I am not too clear whether this man was guilty of things. It seemed that he was.

Mr. Blair: He never denied guilt. That is something that should not be overlooked.

Mr. Shymko: It is a very unique circumstance.

Ms. Bohnen: He did not deny eating free food. He did not admit his guilt.

Mr. Shymko: He did not deny.

Ms. Bohnen: He did not deny eating the free lunches.

Mr. Shymko: But he did not--

Interjection.

Ms. Bohnen: He did not plead guilty to something akin to the criminal charges.

Mr. Shymko: Had charges been laid, we would not be sitting here today. It is the way the thing was handled, for many reasons, that we have this complex issue. Am I correct in assuming there has been a fundamental change following that?

Mr. Blair: Yes. We have had discipline handed out to a few inspectors, very few, but not for the reasons they were reprimanded or charged in those days.

Mr. Pierce: Is it fair to say that we have gone through just about all the evidence we can and now it is time to come to a conclusion?

Mr. Bell: We are about ready to go to the taproom in the sky, I think.

Mr. Chairman: That is a fair assessment.

Mr. Bell: Thank you, your honour.

Mr. Chairman: Are there any more questions? Does anyone wish to address the committee?

Mr. Bell: Just before you go, Mr. Blair and colleagues, is there anything else you believe the committee should hear of or know of before we ask Dr. Hill to sum up?

Mr. Blair: Anything I would say would just be a reiteration of what I said earlier, that the predecessor board to the one that is there now dealt with a very delicate situation. One has to consider the climate in which they were dealing and also their concerns for the individual, as well as for the reputation of the board. What they did can very well stand the light of day, and justice was served.

Mr. Grannum: I would like to add that there has been a lot of emphasis on administrative fairness in the light of recent court decisions. We have to look at this in the light of administrative fairness as it existed in 1979 and 1980. We have an

instance here where a person was dealt with. He had counsel at his side, and he was not deprived of the right to counsel. He had his rights under the grievance procedure and he was not in any way, in my submission, deprived of any rights or treated at all unfairly. He had counsel. He could have gone for judicial review proceedings before the courts.

There was mention of a recent court decision, but that may have dealt with a person who was not a member of a union or an association where he had protection. Maybe in that case that person was all alone and had no one on his side and the court found that he should have these rights.

Mr. Bell: Thank you, gentlemen.

Dr. Hill and Ms. Bohnen.

Dr. Hill: Linda will start off, and I will conclude.

Ms. Bohnen: It is important that we bring the discussion back to the issue as Dr. Hill saw it, which was, first and foremost, in terms of procedural fairness. I ask you to rely on the facts as set out in the synopsis, in which the board concurred some time prior to these hearings.

We heard some different versions of the facts this afternoon, and I cannot let those go by unchallenged. At the investigative hearing, Mr. L was not represented by the counsel of his choice. He had less than 24 hours to prepare himself for the hearing, so it is understandable why he did not retain his own counsel.

He appeared at the hearing with a notice that made no mention of any allegation of benefits, and present at the hearing were several union representatives, including a union lawyer and a Ministry of Labour articling student. It is true they were there. None of them was in much of a position to advance his case because, as I have said, they had only an incomplete statement of the matters to be discussed at the investigative hearing. There was no notice of the key allegation of accepting benefits.

It has been stated that they had a full opportunity there to respond to the allegations against Mr. L. At some stage of that investigative hearing or afterwards, they were indeed given the inspection reports prepared against Mr. L some time prior; however, I cannot imagine that anyone would consider that being handed a bundle of evidence at that time would be sufficient notice and opportunity to prepare a case.

We have not heard yet throughout this long afternoon any explanation as to why such a short and incomplete notice was necessary when the key allegation against Mr. L was made 10 months earlier. I was surprised to hear Mr. Boukouris say that Mr. L could have had a full hearing involving examination and cross-examination of witnesses. I was surprised for a few reasons.

First, since they did not know until they got there that there was an allegation of benefits, how were they in a position

to even know which witnesses ought to be summoned to give evidence? It was clearly impossible for them to have done that.

3:50 p.m.

The record is very clear. As soon as he got to his own lawyer after that investigative hearing, as soon as he got to him on July 3, he started making every effort possible to have a full oral hearing and he was turned down consistently by the board. The only opportunity he was ever given was to make written submissions.

Mr. Callahan: He was not turned down; he was never answered.

Ms. Bohnen: He was never answered at all, you are quite right. We have also heard, it seems to me, some inconsistent explanations of the function of the investigative hearing. On the one hand it is informal and fact-finding. How do you find the facts if people do not know what the issues to be discussed are? On the other hand, if it is informal, how are people to have the opportunity to examine and cross-examine the witnesses? The two just do not come together.

At the same time, after this informal little fact-finding session, we know that the outcome was pretty grim for Mr. L. The matter got referred to the discipline committee and he was suspended without pay.

Mr. Boukouris: With pay.

Ms. Bohnen: I am sorry. He was suspended with pay. If that was to be his opportunity to have a full and fair hearing, then it was surely pretty far off the mark, considering there was no opportunity to bring in his own witnesses, much less cross-examine the witnesses who made statements against him.

I do not know that I want to rehash all the evidence on who solicited whose resignation. We think the evidence is clear, and it has not been denied by the board, that the personnel manager made the statement to him that if he did not resign, the material would be turned over to the police and he could face charges. I think it is also abundantly clear that at the time the statement was received from the restaurateur, board policy was most unclear as to the consequences of taking benefits, of having free meals.

I have no doubt at all that after Mr. Boukouris took over the message got out very clearly to inspectors not to do that, but this is much later in time than the events that ultimately led to Mr. L's resignation.

It is also very important to bear in mind that he never admitted to wrongdoing. He admitted that he ate free food at the restaurant. He also explained it away by saying he did not know that was wrong and he had not been presented with bills. So please remember that, while there has been an admission, it falls far short of an admission of guilt by Mr. L.

There has also been a lot of discussion this afternoon about the role the union played in this. It was not the purpose of our

investigation to find out what the union's motivation was, to exonerate the union, or to blame the union. We cannot help you decide what was going on any more than we have already and I think we have made the picture as clear as we can.

For us, the facts remain that in procedural terms this man faced pretty grim sanctions after a pretty fundamental lapse of procedural fairness was given to him. That is all I wanted to say.

Dr. Hill: Once again I must state that I did not bring this case to you to defend taking benefits or any other improper activity. I tried to make this clear in my written and oral statements. I brought it to you because I believe that everyone is entitled to be treated fairly. Once again I must state that procedural fairness is what an Ombudsman is all about; no more so than when a government agency, with all of its resources and powers, comes down on an errant employee.

As far as I am concerned, as my counsel has put it over and over again, civil liberties, administrative fairness and natural justice all come into play in this case. Dismissal has been likened to capital punishment in the sphere of employee relations. I emphasize again that an employee is entitled to fairness in every respect before the axe falls.

In spite of enormous differences in regard to the facts--indeed perplexing differences, since the board agreed with the synopsis we presented; I cannot understand that--I still believe the individual complainant in this case was treated unfairly. I do not envy you in trying to unscramble information and determine where the truth and justice lie.

I feel I must state that we engaged absolutely in administrative fairness in respect to the board since I say again, we gave it a detailed synopsis and were prepared to change and discuss anything the board felt was wrong, anything with which it disagreed. They did not do so. I simply end by saying that the matter disturbs me. I am most perplexed.

Mr. Blair: May I ask Dr. Hill a question of fact? He can answer yes or no. I intended to ask earlier and I forgot.

Mr. Chairman: Go ahead.

Mr. Blair: Did you or any of your staff have a meeting with my predecessor Mr. Rice regarding this matter?

Dr. Hill: I would have to check on it. No.

Ms. Bohnen: No.

Mr. Blair: That is all I wanted to ask.

Mr. Bell: Members have already decided they want to deliberate in camera immediately.

The committee continued in camera at 3:57 p.m.

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Government
Publications

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
FRIDAY, SEPTEMBER 6, 1985



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From the Workers' Compensation Board:

Emmink, A., Director of Hearings
Warrington, T. D., Vice-Chairman of Appeals

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE OMBUDSMAN

Friday, September 6, 1985

The committee met at 10:05 a.m. in room 151.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: First, I would like to inform the committee that the subcommittee met this morning and Mr. Philip will be presenting a report next week.

In view of the fact that this is Friday, we will conclude our hearings at 12:30 p.m. I will call on Dr. Hill, the Ombudsman.

Dr. Hill: The representatives of the Workers' Compensation Board have graciously consented to start in response to my annual report. I will make my statement afterwards.

Mr. Bell: I wonder if we might get some housekeeping matters out of the way before we deal with the systemic issues.

Members of the committee, I am going to ask you, if you would, to flip to a couple of places in your volume I. There are two things to discuss with Mr. Warrington, vice-chairman of appeals, who appears before you this morning, as does Mr. Andy Emmink. Mr. Emmink, I have forgotten your most recent position.

Mr. Emmink: I am now the director of hearings with the board.

Mr. Bell: They appear and will assist the committee in its consideration of these matters.

The first thing I would like to deal with is the response of the board to certain recommendations that you, when you were a select committee, made in your 12th report to the Legislature, which was debated and adopted. You can find the relevant material to that in 1(b)(ii), and I turn to that. What I have included for you there are just the relevant portions of the 12th report which, in a couple of cases, describe the matter very briefly. In fact, in three cases they describe them very briefly. Can I try to do this in a summary way?

Mr. Emmink, I take it that for each of the recommendations noted therein, that is, recommendation 3 for summary 11, 4 for summary 12, 5 for summary 14, 6 for summary 16, 7 and 8 for summary 17 and recommendation 9 for the special report, all of those recommendations have been implemented by the board?

Mr. Emmink: That is correct.

Mr. Bell: Has the board informed, some time between implementation and now, either or both of Mr. Hill's office and the committee of the specifics of the implementation?

Mr. Emmink: That is correct.

Mr. Bell: Dr. Hill, you can confirm that?

Dr. Hill: Yes.

Mr. Bell: Can you confirm that the steps the board has taken in each of the cases are, in your view, adequate and appropriate?

Dr. Hill: Yes, they are.

Mr. Bell: Members of the committee, with that, I do not see any useful purpose in going into any of the detail.

Mr. Emmink, for reasons that are not terribly relevant now, the committee may not have all of the documentation behind the specifics of the implementation. Would you undertake to forward in the next couple of days anything you have already sent to me?

Mr. Emmink: Yes, I will.

Mr. Bell: That will complete the committee's record.

Mr. Philip: Would you give us again the numbers of the ones that have been adopted?

10:10 a.m.

Mr. Bell: They are all of the recommendations that are found in tab 1(b)(ii) and they go from pages 3 to 9, inclusive.

Mr. Chairman, unless you or the committee members think otherwise, I do not propose to deal with that in any more detail.

Mr. Chairman: Okay.

Mr. Bell: The next matter you again can find in volume 1 of your material. It is tab 2, towards the end of the book, tab 2(viii). The easiest way is to look at the tab that has 2 at the top and 3 at the bottom.

This documentation is the portion of Dr. Hill's report wherein he has summarized, in his view, recommendations in previous Ombudsman or committee reports which the board has not yet implemented or in which some further action is contemplated or required. At page 3 of the material, in an appendix form, you can see that Dr. Hill has summarized a matter that arose in his ninth report as detailed summary 22, and that was considered by the committee. What you do is start at the left-hand side and obviously you read towards the right.

That matter was considered by the committee on two separate occasions, once in its 10th report in respect of which it made recommendation 14, and again in its 11th report in respect of which it made recommendation 2. It is that recommendation which is the material one for your purposes this morning.

Without going into the detail of the case, we can work from the language of the recommendation, that is, that a decision of the Workers' Compensation Board of September 20, 1983, be reversed, and that the complainant in question be granted a temporary supplement to a permanent partial disability award that he had already received.

Just to give you a little background, the committee in its 10th report told the board, in effect, to reconsider its decision with a view to granting the complainant a temporary supplementary award. The board did review its decision but decided that no temporary supplementary award was appropriate. We had another go at it last time and the committee in that case was more specific in its recommendation. It said, "No, we do not want you just to reconsider it, we want you to grant some amount of an award." The committee left the assessment of the amount to the board.

At the bottom right corner of Dr. Hill's appendix, you can see he has reported: "After further discussions with the Ombudsman's office, the board granted the injured worker a supplement for one year amounting to approximately \$950. The committee must now decide if its recommendation has been implemented."

Mr. Emmink, did the Workers' Compensation Board reverse its decision of September 20?

Mr. Emmink: Yes.

Mr. Bell: And did it grant the complainant a temporary supplement to his permanent partial disability award?

Mr. Emmink: Yes, it did.

Mr. Bell: And it was \$950?

Mr. Emmink: That is correct.

Mr. Bell: In arriving at that figure, did the board assess the supplement to which the person was entitled?

Mr. Emmink: That was the supplement, yes.

Mr. Bell: And the board assessed that as the appropriate amount?

Mr. Emmink: Yes, it did.

Mr. Bell: Dr. Hill, do you have any comments?

Dr. Hill: No. We are satisfied with that.

Mr. Bell: Again, members of the committee, I do not think we need to go into the matter in any further detail.

Mr. Emmink, if you have already communicated something in writing in respect of this matter to the committee, could you give me a copy of it along with the other documents?

Mr. Emmink: Yes, I will, Mr. Bell.

Mr. Bell: Otherwise, members, I think you can consider that matter to be at an end.

Do I take it now, Dr. Hill, in view of the board's implementation of all of the committee's 12th report recommendations and the one we have just looked at that, save and except the two we are going to be talking about in the next two days, there are no outstanding Workers' Compensation Board recommendations?

Mrs. Catton: There is one case that we issued a report on and reported on in this report but had asked the committee to defer consideration on. It is detailed summary 11. There were three hearing-loss cases, and the policy has not been completed.

Mr. Bell: I want to exclude those. Exclusive of the ones that are reported in your 10th anniversary report--what is that, your 13th or your 12th?

Mrs. Catton: Thirteenth.

Mr. Bell: That is why you did not call it then. Exclusive of the ones that are in there, there is no backlog.

Dr. Hill: That is correct, Mr. Bell.

Mr. Bell: Okay. I should tell members of the committee that this is the first time that has happened. Mr. Emmink and Mr. Warrington, you are to be commended for assisting in that regard.

The housecleaning matters are taken care of. Two topics of substance remain to be dealt with today. The second will be your consideration of recommendation-denied case 9. We will at least get a start on it.

For the first matter we will be dealing with, those of you who have volume 1 of Dr. Hill's 10th anniversary report handy should turn to it. If all members do not have copies handy, I would ask Todd to have pages 11 and 12 of volume 1 photocopied. It is not in your brief materials; it will be separate. Maybe we should just wait a moment so that as many members as possible can turn to those.

Let me give you a brief background. Dr. Hill in his report last year raised what he described as systemic problems in his investigation of and otherwise dealing with complaints concerning Workers' Compensation Board decisions. He raised them for the first time in his report. He repeated them before the committee in

his opening remarks. I think in formal terms it is correct to say that this was the first time the board had been made aware that Dr. Hill intended to raise the two as an issue with the committee.

10:20 a.m.

When the board appeared before the committee, it quite correctly took the position that it wanted time to consider Dr. Hill's comments. The board did not accept the comments as correct, but nevertheless it undertook to have discussions with Dr. Hill on the two matters to see whether some understanding or resolution could be affected. That is all that you members of the committee knew until Dr. Hill reported in June in his anniversary report.

As you can see from pages 11 and 12 of his report, he raises the two issues again, and I will not try to categorize them. Dr. Hill, I am sure, can do that better than I can. It is the two matters he raises there that you will be discussing with him and the board this morning.

For the record, let me introduce, sitting with Dr. Hill, Niki Catton. Mrs. Catton is Dr. Hill's representative who has direct responsibilities for Workers' Compensation Board matters. It is another way for forgetting exactly what her title is. Mrs. Catton asked me this morning if the committee would mind if the board representatives went first. I do not think the committee minds at all. Dr. Hill's comments speak for themselves. The two issues are there. I guess I will describe them.

The first one is whether and to what extent the board does, and should be bound to, follow legal precedent in formulating its decisions. The second is whether or not the board does, or should, prefer the medical opinions of its in-house doctors as opposed to opinions of other doctors, recognized specialists in their field in private practice, who have in some way examined, treated or otherwise had medical involvement with the patients.

I am just trying to think if I can categorize the field of medical expertise that this has been most prevalent in. Dr. Henderson, I am looking at you, and I think it is psychiatry wherein the difficulty has been, if not most frequent, certainly it is up there with the leaders. I guess orthopaedic specialist is probably the leading one.

I can be corrected if I have misstated this, but in simplistic terms, the board takes the view that its medical staff are highly experienced and qualified in assessing injuries against the background of the work force, as a work-related injury or as arising out of or in the course of employment, to use the words of the act. Because its staff makes those assessments hundreds of times a year in comparison to members of the profession in private practice who arguably do not do it as frequently, the board believes that the in-house opinions are more weighty and preferable.

Somebody has put something in front of me. You have had distributed to you, because Mr. Warrington is going first, his comments to you against the background of Dr. Hill's remarks in his report. With that long-winded explanation, Mr. Warrington, welcome, and begin as you wish.

Mr. Warrington: Let me first thank the committee for this opportunity to address comments submitted by Dr. Hill to the committee and contained in his annual report for 1984-85. As the vice-chairman of appeals of the Workers' Compensation Board, I would like to bring to your attention certain aspects of Dr. Hill's remarks with regard to recommendation-denied cases and to what he refers to as systemic problems which prevent injured workers from receiving compensation.

In the context of the 388,845 entitlement decisions made last year by the board, we are dealing here with a rather small number of cases. In that same year, Dr. Hill received 565 jurisdictional complaints against the board, of which 35, or six per cent, were supported. Out of those supported complaints, only 11 are included in his annual report. This represents 1.9 per cent of the Ombudsman's workers' compensation case load, or approximately one case for every 35,000 workers' compensation claims adjudicated by the board in 1984.

Further, of the 11 supported complaints, six were settled prior to the convening of this year's standing committee, two were withdrawn by Dr. Hill's office and one has been deferred. Therefore, we are here with reference to two outstanding matters out of an original compensation case load numbering close to 400,000.

It is my opinion that any discussion about systemic problems and the relationship of the board to injured workers should take these figures into account. However, it has always been the board's opinion that each case is as important as the next, and I assure you we will treat the remaining two cases with the attentiveness they deserve.

Turning my attention to Dr. Hill's more general complaints, let me frame my comments in this regard with a statement about how the Workers' Compensation Board understands its legislative mandate. We feel quite strongly that the Legislature has conferred on the board the task of deciding whether a person is entitled to benefits under the Workers' Compensation Act, and we assume that Dr. Hill's comments are not meant to challenge this clearly established mandate.

Given this context, I would like to respond to Dr. Hill's chief concerns, namely, the board's interpretation of the concept arising out of and in the course of employment, the question of the board's method of determining disablement and our interpretation of section 43 of the Workers' Compensation Act.

On the question of the concept of injury arising out of and in the course of employment, there are two ways to look at it. In the first type of injury, there is a clear-cut relationship between disability and a work accident; for example, a blow which

fractures a bone. In this category I would also include the link between certain diseases which are clearly the consequence of specific industrial processes; for example, the link between lead and lead poisoning. The adjudication of this type of claim can be relatively straightforward.

In the second type of work injury, the relationship between an ongoing disability and a work accident can be less clear. In some cases, an underlying condition worsens as a result of employment; an already bad back can get worse. If a cause and effect relationship can be established, workers with such pre-existing conditions are compensated.

Despite the board's best efforts, a relationship cannot always be found. In these cases, the board cannot find in favour of the disabled person. In spite of the fact that compassion might make us wish that a relationship could be found, the board's mandate is to compensate people for injuries they suffer on the job. If a person suffers an injury or disease that cannot be medically related to a job, the board cannot confer benefits.

Medical opinions may vary on the cause of an ongoing or progressive disability. You might remember that Dr. Hill raised some concerns on this matter in his annual report last year. In this regard, we established an agreement with Dr. Hill that where there is a conflict of medical opinion between the treating physician and the board's own medical experts, the case would be referred to an independent, mutually agreed upon medical expert.

Dr. Hill has described this as "a good first step" in this year's annual report. The board therefore finds it rather curious that he has not suggested this process of mediation be used in any of the recommendation-denied cases he cites as examples of systemic problems.

10:30 a.m.

Might I add, with reference to the relationship between disease and industrial processes, that the board will be assisted in the future by an independently established industrial disease standards panel as described in Bill 101.

As for Dr. Hill's concern about the availability of independent medical opinion, I should remind the committee that under Bill 101, after October 1, the new external appeals tribunal on workers' compensation will have access to a panel of independent medical experts selected by the Lieutenant Governor in Council.

Dr. Hill further suggests that the board conducts itself "as though it were above the law," in that it does not take account of legal precedent in case law and does not seek independent legal opinion.

In an attempt to assist the committee last year, I pointed out that the act was designed in the first place to remove the legal adversarial barrier from just and speedy compensation for work-related injuries. In the board's view, to inject the concept

of regard for legal precedent into the compensation system would serve to re-establish the legal adversarial atmosphere.

Notwithstanding this, at a board meeting last fall it was agreed that the board's appeals administrator would identify cases which might involve employment relationships or an interpretation of a section of the act. Such cases would then be referred to the board's legal services section for review, should the appeal board consider it necessary.

I believe further discussion of the need for background legal reference should be reserved for consideration by the chairman of the new workers' compensation appeals tribunal.

With regard to the interpretation of section 43 of the act, let me point out that we have in hand the independent legal opinion of Mr. J. J. Robinette, which supports the interpretation of this section, and the concurring opinion of the Attorney General's office. This opinion also has the express preference of the Legislature. Considering its history, it seems that outstanding questions regarding this matter would be within the exclusive purview of the government.

There is one other issue on which I hope I can set Dr. Hill at ease: namely, changes to the board's permanent disability rating schedule. Let me assure Dr. Hill and the committee that the rewriting of this schedule is in its final stages. In doing so, we have referred to similar rating schedules from numerous Canadian and foreign jurisdictions, and we are confident it incorporates the accumulated knowledge and experience of these many jurisdictions.

These are my comments with reference to Dr. Hill's statement and the annual report of the Ombudsman. I hope I have succeeded in reassuring Dr. Hill and yourselves that the board's interpretations of various questions are consistent with its legislative mandate as expressed in the Workers' Compensation Act. As well, I trust Dr. Hill's remaining concerns will be answered by the pending legislative amendments to which I referred earlier. At this time, I will be pleased to answer any questions the committee may have.

Mr. Henderson: With regard to page 6, the second paragraph, and your perhaps hypothetical example of the bad back which can get worse, I know from my own professional involvement in these kinds of situations how difficult they can be.

Can you give me some indication of how the board operates if a bad back gets worse and it is claimed to be on account of work-related activities? Presumably it would have gotten worse on the basis of comparable activities anywhere. In other words, if a worker claims his back got worse because he had to be on his feet a lot, and one assumes that to be true, had he been doing anything else he would have been on his feet too, and it would have gotten worse. How do you make findings in that kind of situation? Is my question clear?

Mr. Emmink: If I can respond for Mr. Warrington, that is the type of situation we run into quite frequently, and it is

difficult for the board to deal with. There is the straightforward case, in which somebody falls off the back of a truck and hurts his back, and that is not difficult. There is the less straightforward case in which somebody is doing a particular type of work over a period of time and his back becomes sore. That is probably the type of situation you are alluding to.

In those situations the board's approach is that where the activity that took place over a period of time is unusual for that worker, if he is not accustomed to it, we would look favourably at that as opposed to the individual who has been doing the same type of, albeit strenuous, work for all his working life. For that individual there is nothing to relate his particular problems to something specific in the employment.

Does that help you at all?

Mr. Henderson: Yes. On page 10, second paragraph, I am trying to work that through as to the consequences. Of course, if the board and the claimant agree, there is no need for anything adversarial or legal. If we do not inject into the compensation system the concept of regard for legal precedent, do we not load the situation in favour of the board? It means that when there is no agreement, the worker does not have the option or the benefit of legal precedent having been considered. The potentially adversarial legal process, which I am not crazy about either, cannot be used in his favour.

Does that thesis, although on the surface it sounds plausible and seems rather compelling, rather load the dice against the claimant?

Mr. Emmink: First, I want to make it clear that the statement is not meant to convey the impression that the board will totally disregard the law. That is not what we meant at all.

What we fear for, and on behalf of, the injured worker, is a situation where an employer's solicitor, and many of the larger employers have solicitors on retainer, can come in with a law clerk or whatever, and long lists of case law, in support of the employer's position, whereas the worker who may appear there with his union representative, or in some cases with constituency assistants for members of the Legislature, would not be prepared to meet with that sort of attack on behalf of the employer.

It is this kind of thing that we feel may be introduced if the board were held accountable for researching the case law in each and every case. We would prefer to conduct the hearing in a much more informal way, if you like, where case law is introduced as a part of the submission. We are not going to totally disregard it. We have a bit of fear of injecting into the process something more formal than that.

Mr. Henderson: I am all in favour of informality, especially if it leads to some resolution, but the example you gave would load the situation in favour of the employer. Would it not be more frequent that dispensing with case law and legal precedent would load the situation against the claimant? Did I say that right? Yes.

Mr. Emmink: It has not been our experience that very many representatives for injured workers will come in armed with all sorts of case law. I will admit that I have not been privy to all the hearings that the board has held, but in my experience, the case law element has been introduced most frequently by the Ombudsman after the appeal board has rendered its decision, but not during the process itself.

Mr. Henderson: As you describe it, it sounds as though the reason you do not want to concur with the Ombudsman's suggestion is that you feel it would be potentially to the disadvantage of the claimants to do that.

Mr. Emmink: That is our fear, yes.

11 a.m.

Mr. Henderson: A final question: Can someone help me learn more about what section 43 of the act is all about?

Mr. Emmink: That is the permanent disability section.

Mr. Bell: Regrettably, Dr. Hill and Mrs. Catton did not go first for that particular issue. I know they intend to explain to the committee in more detail the problem of section 43 and the differing interpretations. I think it would be better if questions on that issue were reserved until after they have finished.

Mr. Pierce: I would like to go to page 6, at the bottom of paragraph 2, and the phrase "An already bad back can get worse." I would like to know how you define a cause-and-effect relationship.

If a person has hurt his back by carrying a heavy load and the compensation board awards in favour of the claimant and then five years later the back continually gets worse, how do you establish whether that is a result of the two pails of water he carried five years ago or whether it is just old age catching up on his back?

Mr. Emmink: Yes, Mr. Pierce, that is something we run into very frequently as well. You have the situation where somebody has an impressive accident, or maybe even not so impressive an accident. In any event, there is an underlying but noncompensable disorder.

Degenerative disc disease is the situation we see most often, and there may be an aggravation of that underlying condition which keeps the man off work for a couple of weeks; then he goes back to work. Five years later his back starts to act up on him again, and he says, "Gee, this is because of the time I fell off the truck five years ago." We will look at that situation and determine whether he reached a pre-accident state between the first incident and the second exacerbation.

There may be a situation where he is going to his doctor every few months, or he has had the odd physiotherapy treatment, or he complains to the guys at work, "Gee, my back is still

bothering me." If that were established for that intervening period, we could say: "This man never returned to his pre-accident state. Heck, he never complained about his back before the accident; but after the accident, even though he has been working, he still has these problems." In that situation, we would say the second incident would in all likelihood be related to the first.

The other side of the coin is that you have the guy with the incident five years prior and absolutely nothing wrong with him since that time. There have been no visits to the doctor, no complaints to co-workers and he has a spontaneous exacerbation. In all likelihood in such a case, we would say, "Listen, it looks to us as if you have recovered from that aggravation of your degenerative disc disease and we cannot accept this most recent episode as related." Therefore, no benefits flow.

Mr. Pierce: If I could just follow up on that--I do not want to belabour it--I am sure in many cases you will find claimants who have had a minimum back injury and who were off work for two or three days and established a claim and then for five years never went back to a doctor but may have continually had a little gnawing back pain and did nothing more than take Aspirins and complain to their wives; but after five years the pain gets so bad and they can no longer stand it and they go back to the compensation board and say: "Look, this has never really cleared itself up. I am not a habitual complainer. I am not a guy who wants to go to the doctor every second week just so I can keep my claim open, but I am here now."

I can appreciate the board's dilemma, but I can also appreciate the claimant's dilemma. I am sure we do not suggest that everybody who has any kind of injury sits at the doctor's door until such time as he establishes a permanent claim and he no longer has to worry about income for the rest of his life.

Mr. Emmink: That is an excellent point, Mr. Pierce, and it is true. You do have a situation here where the more stoical amongst us are in effect at a disadvantage down the road simply because they have not run to the doctor at every ache and pain. We try to look very carefully at those situations when they develop.

We look at the original injury. If it was only a strain or a sprain of a ligament in the back area and there have been no complaints, then it is unlikely that the strain would remain quiescent for five years and then pop up again. However, if there were some signs of a disc involved at the time--not a full-blown disc; maybe a slight bit of radiation into one or both legs, but that eased off--then it is much more likely there would be some relationship down the road if the complaints down the road were of a similar nature.

We have to look very closely at the original medical findings and the subsequent medical findings to see if we can tie in a relationship that way.

Mr. Philip: It seems to me there are two types of cases I have run into where you have denied compensation on the ground that the person has not sought continuous medical attention. One

is where the person may have another injury and where he is taking drugs for that other injury, and those drugs may have the same type of pain-killing effect on the compensable injury.

For example, where a person may have an arthritic condition and a back problem. They may be taking pain-killers for the arthritic condition. Suddenly, the doctor says, "We have to cut down on your pain-killers for the arthritis," or "I have a new drug," or something or other, and the back suddenly flares up. In those instances, I have found you rule against the complainant.

The other one happens where the doctor says: "Look, there is not a heck of a lot I can do for you. You can take pain-killers if you want to, and I can prescribe them, but there is nothing more that can be done." The fellow believes his doctor and says, "There is no sense in my going back and forth to a doctor. I know I have a pain, but I am not going to seek any remedy. I do not like taking these 222s," or whatever they are. Then he puts up with it until it becomes unbearable. Five years later he goes back, and then you do not compensate him. You say, "If you had really had a problem, you would have been seeking medical attention."

In fact, what he is doing is following the doctor's orders. The doctor has said: "I cannot do a thing for you. With medical science at its present stage, there is nothing we can do for you." So you rule against the claimant on the grounds that he has no record of continuously running to the doctor, to the chiropractor, to the psychiatrist to remove it psychosomatically or however.

Mr. Emmink: Those are truly difficult cases. However, we do go beyond just medical continuity. We will go out to the work place and interview the people he works with. We ask his foreman whether he has asked not to be put on a certain type of work because it bothers his back. We ask the guys he sits with at lunch if he has he complained about his back the odd time. We usually find that, where there is an ongoing problem, these fellows will mention it from time to time, not in any complaining way, but saying, "Geez, my back still has not been fixed up yet, and the doctor says there is nothing I can do about it."

Usually there will be some knowledge, although scanty, with the people they work with, and this helps us out. I would think the cases you are talking about would be the ones where there is absolutely nothing: we have checked with the people he works with, we have checked with the doctor, and none of them can recall any complaint. In those cases, we feel we really do not have any alternative. There is nothing to relate the two incidents together.

Mr. Philip: The third type I think you tend to rule against is the fellow who happens to look healthy, regardless of what the medical evidence is. I have a case where I can guarantee there is absolute proof medically from every orthopaedic surgeon. However, because this guy happens to have done body-building and looks as though he is Mr. Charles Atlas, he is only 35 or 32 or whatever age and looks as if he should be out lugging cement or something, it seems as though the Workers' Compensation Board rules against him, despite the fact that there is all kinds of medical evidence.

I really wonder if there is stereotyping, in which you ignore medical evidence simply because the guy looks healthy. If he had come in on crutches, looking as though he were in terrible condition, with that kind of medical evidence he would get a pension for life.

Mr. Emmink: I would be the first to admit we are not perfect. If you would like to leave the particulars of that case with me, I will look into it.

Mr. Bell: Mr. Warrington and Mr. Emmink, I would like to get the focus back on the competition, if you will, among medical opinions that Dr. Hill raises. Last year, Mr. Warrington, you made a statement to the committee. Forgive me, but I liked your words last year better than this year, for the reason that they put the issue more succinctly. If I might, members of the committee, it will give you some more background.

10:50 a.m.

This is on the issue of competing medical opinions. From the worker's side there are opinions from members of the medical profession in private practice, experts, specialists in their field. The medical opinions from the board are, in this hypothetical scenario, from its so-called in-house medical staff, some of whom are also specialists in the same field.

Against that background, Mr. Warrington, at page 3 of September 10, 1984, afternoon session--

Mr. Warrington: Are you referring to the comments I made in respect to Dr. Hill's comments?

Mr. Bell: Last year, yes.

Mr. Warrington: The paragraph beginning, "While the committee's comments..."?

Mr. Bell: You are right on. You have got it.

"While the committee's comments were directed to a case of permanent disability assessment, the board believes that the principle of relying on the best evidence is embodied in it." We were talking about a specific case, and then we get into the general, so "relying on the best evidence" is the motivating feature.

"Treating physicians are clearly more expert when it comes to eliciting findings, using those findings to arrive at a diagnosis and, from there, deciding on the most appropriate treatment modality. The board's physicians, however, by virtue of their experience in analysing medical data and case histories, are in a better position, in the board's view, to offer advice on cause-effect relationships. Objectivity and impartiality are other factors that may in some cases cause the board to prefer the assessments and opinions of its own physicians." Forgive me for laughing. It is not often that you call your own employees objective and impartial, but that is all right.

"I am sure committee members will appreciate that, for obvious reasons, a doctor who has provided medical care to a patient and/or his family for many years would quite naturally be inclined to support his patient's claim. Frequently, however, the doctor does not have available to him the wealth of data accumulated by the board's adjudicative and investigative staff. For instance, he may not have the medical reports relating to a prior similar injury, and in some cases he may not have detailed information concerning the work process.

"While acknowledging that in certain circumstances the board may prefer the opinions of its own physicians to those of independent practitioners, the board has some difficulty understanding that this occurs with sufficient regularity to constitute a problem from the Ombudsman's point of view."

Mr. Warrington, I read that because, respectfully, I am not sure what you have said in your statement about the long-term implications of what Dr. Hill raises. You do refer to the new legislation and the independent tribunal, etc.

I guess this is the best leadoff question: Are you saying that the phenomenon of the board appearing to prefer, and admittedly preferring, the opinions of its own practitioners will be diminished with the new legislation and the onset or the availability of this independent tribunal?

Mr. Warrington: I am not sure it will be diminished. I think only time will tell.

Mr. Bell: All right. We have a phenomenon that it exists. You have said it on the record, and we have seen cases in which the board, believing it for good, valid and sufficient reasons, has said, "We prefer the opinions of our in-house physicians."

Mr. Warrington: One of the 11 cases this year is a case where the board accepted the outside opinion over those of the board doctors.

Mr. Bell: All right, but deal with my question. There have been occasions, and we have seen them--I do not know about the frequency--when you have said, "We prefer the opinion of our in-house medical physicians over the opinions of physicians in private practice," who may or may not be family physicians.

Mr. Warrington: I do not think it is fair to generalize on that. It depends on the individual case and on who the outside doctor is. If it is a general practitioner as opposed to an orthopaedic specialist, that is a different situation.

Mr. Bell: Let us deal with what you said in the one sentence I think we can focus discussion on. In the first paragraph that I read, the last sentence says, "The board's physicians, however, by virtue of their experience in analysing medical data and case histories, are in a better position in the board's view to offer advice on cause-effect relationships." In a better position than who? As you said in the preceding sentence,

"treating physicians who are more expert in eliciting findings and using those findings to arrive at a diagnosis."

Why do you say the board's physicians are more experienced than those treating practising physicians?

Mr. Warrington: Because of their experience in dealing with workers' compensation claims, as opposed to general practitioners who are working with all aspects of medicine. As I have said, treating physicians are clearly more expert when it comes to eliciting findings and using those findings to arrive at a diagnosis, and therefore deciding on the best treatment modality. But the board physicians, by virtue of their experience in analysing medical data and case histories, are in a better position to offer advice on cause and effect, rehabilitation and so on.

Mr. Bell: In some of the cases the committee has heard, the opinions that the board has accepted from its own staff physician are opinions derived from a review of medical data and case histories alone and not in conjunction with personal examinations and assessments of the patients.

Mr. Warrington: Not always.

Mr. Bell: I have been talking about some. Whether it is one or 1,001, we have seen cases--

Mr. Warrington: It is one of the reasons we have the rehabilitation centre.

Mr. Bell: In some cases, you had a physician review the file and give an opinion. That opinion has been preferred over that of somebody in private practice who has examined the patient, perhaps treated the patient, and said, "I believe there is a causation."

Mr. Emmink: May I comment?

Mr. Bell: After he has answered, "Yes, there are some of those cases."

Mr. Warrington: Yes. Absolutely.

Mr. Emmink: On this question of the preference of opinions in the context of some having been arrived at in the course of a paper review and others having been arrived at as a result of a personal examination--maybe I am not reaching the right conclusion--the impression I have been left with is that there is something wrong or deficient in accepting a medical opinion based on a paper review as opposed to a medical opinion which includes a physical assessment. I am not sure I understand, first, if my impression is correct and, if it is correct, why is that so? Why would that opinion be deficient?

Mr. Warrington: The time factor surely has a play in this. Often, by the time the injured worker gets to an appeal, it has been years since the accident. The diagnosis of the treating physician at the time of the accident is more important.

Mr. Bell: There are two sides to this. Dr. Hill has said, and his predecessors have said in the past, that the reliable evidence is from those who have treated and examined and are acknowledged experts in their field in a general sense, and that revolves around the statement you made about the principle of relying on the best evidence. Some people believe the hands-on opinion is better than, in Mr. Emmink's words, the paper opinion. Some might dispute whether or not an opinion of a doctor based on the review of a file is a medical opinion at all. I know the courts dispute that.

Mr. Emmink: It depends on the case.

Mr. Warrington: I suggest a physical examination five years after the accident would likely reveal nothing, whereas the paper of the treatment modality or the diagnosis that will be contained in the file would be of much more importance.

Mr. Philip: If a person is still complaining about the accident and the pain, I find it hard to understand how your general practitioner can overrule two, three or four orthopaedic specialists who deal with injured workers day after day. I cannot understand how you can accept that medical opinion as more valid than the opinion of the three or four orthopaedic specialists who are dealing in the same way day after day with persons injured on the job.

11 a.m.

Mr. Warrington: I also would have great difficulty with that type of case, where you have three or four--

Mr. Philip: Those of us who practise before the board constantly know that is happening.

Mr. Warrington: I question three or four orthopaedic specialists, Mr. Philip. Here again, that kind of case, which sounds very complicated, would likely end up at the Downsview rehabilitation centre where he could have an assessment.

Mr. Henderson: I want to make a comment with regard to this question of the board physicians versus independent physicians. I do not necessarily accept the preferability of the board physicians, but surely the argument to be made is that the board physicians are experienced and have the mental set of assessing the relationship of symptoms to accidents and events. In other words, they become specialists in causation, if you like; whereas even the independent physicians who do a fair bit of Workers' Compensation Board work, have the mental set of: "The causation is secondary. Let us make a diagnosis and treat."

It seems to me that is the argument to be made. As I say, I am not convinced that there are not equal arguments on the other side. The argument to be made, at least the argument that would be convincing to me, is that between the mental set of a physician who is used to tracing aetiology in terms of events and circumstances as opposed to the mental set of the physician who is used to setting that rather aside and relating signs and symptoms to diagnosis and treatment.

Mr. Philip: It is equally valid to say that certain orthopaedic surgeons who constantly are writing reports for the board are equally experienced in trying to find cause and effect. There is a difference between the guy's general practitioner, who may do one or two compensation cases in a year, and an orthopaedic surgeon at a hospital who is constantly performing these operations and has to prepare report after report.

I can go through my hundreds of files and show you the same doctors' names appearing over and over again. They are used to writing for you people and they know what you are asking for. I suggest they are as experienced in trying to decide cause and effect; but on top of that they also have the orthopaedic background. Their medical knowledge may be more valid than that of the general practitioner who is sitting there looking at a piece of paper.

Mr. Warrington: Mr. Philip, you will recall that at the last session of what was then the select committee, Dr. Hill and I agreed that we would get together, as I had done with the previous Ombudsman, Mr. Justice Morand, to set out a list of doctors for each specialty: orthopaedics, neurosurgery and so on. We had a list of doctors who were agreeable to Mr. Justice Morand and to the board. When we ran into the kind of case that you were talking about, one of those doctors would be selected and used, in effect, as a medical referee. Although Mr. Justice Morand did not like the term "medical referee," we agreed that whatever the independent doctor said in his report would be accepted by both the Office of the Ombudsman and our own office.

That worked extremely well, and you will recall at the last session Dr. Hill suggested we go back to that. Oh, I am sorry, that happened after the committee had met. It was one of the meetings Mr. Emmink and I had with Dr. Hill and his staff. That has never got going. We did not put it into operation, but I think that is a possibility in the kinds of cases you are talking about.

Mr. Philip: That is what you were advocating on page 8, and yet my experience is: (1) it is not done at the medical assessment level; therefore, what you are faced with then is the denial of a case, and (2) that even in the denial of a case, unless I suggest or someone knowledgeable in advocacy suggests an independent physician, it is rarely suggested by the board itself, and instead it is simply denied.

You are talking about major delays. It seems to me if you want to cut down on a lot of these delays, it should be at the regional assessment level; if your physicians cannot make up their minds, they should suggest that the list be used, if you like, and an independent assessment be obtained. If you did that, you could save the client something like six or seven months' delay in having it decided one way or the other.

Mr. Emmink: We appreciate those comments, Mr. Philip. We will certainly take them back and see if there is any way we can incorporate that process any earlier.

Mr. Philip: I know you accept that. When I suggest that at a hearing, they say, "Fine, we will submit to an independent assessment," and usually the adjudicator will go on with it. But by that time the guy has not had any money for six months. This summer I am asking for hearings that are being booked into March.

Mr. Warrington: March 1986?

Mr. Philip: February and March. That is what my assistant says how long it will take for getting them.

Mr. Emmink: We are booking them for October and November.

Mr. Warrington: Are you talking about the new appeals tribunal, Mr. Philip?

Mr. Philip: No, second level.

Mr. Emmink: In my capacity as director of the hearings branch, I can tell you, if you want a hearing in November, I can get you one.

Mr. Philip: It pays to do business with you face to face.

Mr. Bell: Another point has to be made, Mr. Warrington. We went into this session of hearings with 11 outstanding cases. There are only two left. I think you are entitled to rely on that as something in the system that is working as well. Dr. Hill will make his own point about the length of time it takes his office on workers' compensation matters.

May I turn to the legal precedent issue? You make a comment at page 10, second paragraph, "If you inject into the compensation system the concept of regard for legal precedent, it would serve to re-establish the legal adversarial atmosphere." I understand you are saying that against the background of the new legislation, which is intended to remove the adversarial process. I think we all agree nothing should be done which promotes the adversarial process, but can you assist us on another point? When the board in its decision-making process agrees to follow case law, how in practical terms does that re-establish the legal adversarial atmosphere?

Mr. Warrington: Because, as Mr. Emmink said a few moments ago, I believe you will end up with more lawyers in the system who will be citing legal precedent. This leads right down the road to the adversarial route.

Mr. Bell: You can probably count on your left hand and two fingers of your right the number of cases in Ontario that have interpreted your act; so there are not a lot of sections. Whether or not those cases are still relevant to the new legislation is another question.

Something arose out of the exchange we had on the Divisional Court's decision, where Mr. Morand said you did not follow it and you said you did. Statements were made in that exchange to the

effect that because it is reserved for you to be the interpreter of your legislation, the courts do not necessarily have to follow that interpretation. I do not think I have unfairly stated your position.

Mr. Emmink: I think what I said to the committee last year, Mr. Bell, was that while the board will certainly have regard for case law, by the act it is not bound by it. I meant to convey the impression, and I apologize if I was not successful in doing so, was that the board will certainly have regard to case law. We feel we have done so in the past.

I am just wondering whether or not the whole subject is a little academic at this point. With the external appeals tribunal coming into force on October 30, the manner in which they approach this might be totally different. They might wish to emphasize case law. They might wish to emphasize the legalistic aspect of it. I do not know. If they do, I can assure you that decision is coming from the final level of review within the board and we will certainly have to reflect that as well.

11:10 a.m.

Mr. Bell: That is a good point and only time will see whether you are correct or Dr. Hill's concerns remain. But to get your position fairly stated with regard to precedent, I understand you to say that where there has been a decision of the High Court or higher, which interprets a specific section of your legislation, and where the board has been a party to that action, which gives rise to that decision, you will follow that decision. If you do not, you are in contempt, quite simply; so that goes without question.

Mr. Emmink: Absolutely.

Mr. Bell: Where there has been an interpretation of the act or a similar section in another act by our courts or by courts in another province or another jurisdiction, what you are saying is, "We do not feel we are necessarily bound by that interpretation, first, because we were not a party to that action and, second, because we have the ability in our legislation to be our own interpreters." Do I understand you correctly?

Mr. Emmink: I believe that is a pretty fair statement.

Mr. Bell: "Third, where there is a principle of law that has been determined by the court, any court, which has relevance to principles or issues that the appeal boards may deal with in their fields, we do not feel we are bound by those principles as determined. They may be of assistance to us, but again because we are the sole interpreters of our legislation, we are not going to tie our hands." Is that a fair statement?

Mr. Emmink: Without the benefit of counsel here, I would say that is probably a pretty fair statement. I do stand to be corrected, if there is some problem with it from a legal standpoint. If you like I can take that back to counsel and get something more definitive.

Mr. Bell: What you are saying on the second and third category under the new system is, "If we agreed to be bound by that precedent, or our own precedent for that matter, the danger exists that lawyers may be in waving law books and other decisions at us in all of the process and that turns it adversarial again."

Mr. Emmink: And it may be the best way we are going to end up.

Mr. Bell: Okay, thank you.

Mr. Henderson: I have a comment that I guess I can say now. I may want to refine it later. It seems to me that in these cases there is very often a large range of medical opinions. It seems to me that is especially so the more complicated or the less clear the case is. The fewer the objective findings, the more it is in the realm of psychosomatics or feelings or what have you. This makes it more difficult to come down to an objective opinion and so the range of medical opinion is likely to be greater.

I think the polarization and controversy that often occur are related to that. The board positions, I happen to suspect from my own experience, do have an unconscious bias. I do not see how that cannot be so. The claimant, in finding a physician, can very easily find one whose bias is to recommend in a certain kind of way. It seems to me, arising out of that, one of two things are going to happen.

Either we are going to go in the direction of a much more adversarial legal precedent and, for that matter, costly and time-consuming kind of process or we are going to find some way to try to minimize the range of opinions and find some way of establishing, not an unbiased but a middle ground of medical viewpoints to bring to bear on a particular case.

I am hearing from the discussions some suggestion that we are moving in the second direction, that is, tribunals and agreed-upon physicians who are felt to represent a middle ground. I would add the idea of a clinic. If you got a group of physicians working together who consult and case-conference with other, so that they begin to establish a common approach and common set of guidelines, that might be even better. It seems to me there is a lot to be said, in terms of economy and a reasonably speedy process, bearing in mind the number of cases that have to be considered and discussed, for going that route.

Dr. Hill: Are you ready for my statement?

Mr. Philip: I have one more question concerning page 13, the first paragraph. My question is simply when?

Mr. Emmink: Mr. Philip, we expect that that will be one of the first things we submit to our new corporate board. As you know, that will come into effect on October 1. I would say within that time frame, next month or two.

Mr. Philip: So you think that it should be in place by the spring of 1986?

Mr. Emmink: I would think before Christmas.

Mr. Philip: Thank you.

Dr. Hill: Before I start, I just wanted to bring to the attention of the committee that, as you recall, the Ontario Labour Relations Board challenged our jurisdiction. We initiated a court action in Divisional Court to find out whether we did, indeed, have jurisdiction over the body in terms of its decisions and cases. The Divisional Court ruled yesterday that the Ombudsman does, indeed, have jurisdiction over the Ontario Labour Relations Board.

I have not received the judgement yet. I am going to be looking at it very closely, but I wanted to inform you of that since that was one of the things I mentioned as I made my opening comments the other day. I am just reporting that the Divisional Court has supported the Ombudsman's jurisdiction over the Ontario Labour Relations Board.

Mr. Philip: One of your key staff--I would not mention his name because he is in the room looking at me at the moment--was quite humble in the way he smiled on CBC this morning.

Dr. Hill: Thank you. I think we have distributed copies of my presentation. Before I start and talk about WCB, I would like to comment that originally when we came before you there were 11 WCB cases. They have now dwindled to two.

Mr. Bell has mentioned the assistance and support of Mr. Emmink and Mr. Warrington and, indeed, that is so. We certainly recognize that in resolving the cases we have before you.

However, I would also like to express our thanks to the Deputy Minister of Labour, Tom Armstrong, and to Paul Hess, the general counsel, Ministry of Labour. They were very instrumental in establishing an excellent climate in terms of bringing the Workers' Compensation Board and the Ombudsman together to effect these settlements. Mr. Armstrong and Mr. Hess worked with us assiduously throughout the entire process. Again, I would like to express my thanks to them, to Mr. Warrington and Mr. Emmink, and place that matter on the record.

11:20 a.m.

Gentlemen, in my report I raise three systemic problems that have been the root cause of recurring complaints to my office against the Workers' Compensation Board. I have long held that it is not enough to look at and investigate the individual complaint. When we see a consistent pattern of complaints emerging from a particular area, it is time to look at that system, to ask why, and then to seek to address the problem.

I just wrote that in; it is not in my original comments. I have the tendency to write things in as I start saying them and as they occur to me.

As I have mentioned, the board is reluctant to rely on or consider decisions of the courts in assisting in the interpretation of its statute. Although it is rare for the Worker's Compensation Act in Ontario to be the subject of a judicial review in Ontario, there are many other statutes that have been so considered. There are judicial guidelines which could assist the board, for example, in determining whether somebody was an employee or not or whether his or her activity was, in fact, in the course of employment.

During our last meetings I advised you I was meeting with officials of the board to see whether we could agree on some kind of process that would allow the board to benefit from these judicial guidelines.

From meeting with the board, it is my understanding it is reluctant to rely on judicial guidelines--and I am quoting today, too--for fear it might be bound by legal precedent and, therefore, not be able to deal with the true merits of the case. I do not consider this a realistic concern. Certainly, under section 80 of its act, the board has the clear authority to consider the true merits of any case and not be bound by legal precedent. However, this does not preclude the board from benefiting from the wisdom, strictly from the wisdom, of our court system.

I intend to raise this issue again with members of the new corporate board after their appointment on October 1, 1985. I will report to you again on this very important issue.

The second issue I raised in my report is the board's reluctance to accept the evidence of the workers' treating physicians and instead to give precedence to their staff physicians' medical opinions. Clearly, the board's physicians have a specific kind of expertise. I will grant that. However, that certainly does not negate the expertise of the many outside qualified medical practitioners in Ontario, some of whom are internationally recognized experts in their fields.

I am glad to see that the policy of benefit of doubt is enshrined in the new workers' compensation legislation, and it is my intention to ensure it is applied in all cases brought to my attention. If a medical opinion from a worker's doctor is accepted as being as valid as the board's medical opinion, then the benefit of doubt principle should operate to resolve many more cases in favour of workers.

To resolve disagreements with my office that centre on the assessment of medical evidence, the board suggested we implement a medical referee system. For example, in a case before the Ombudsman in which there is a clear dispute between the doctors, we would agree to refer the matter to a mutually acceptable medical specialist for an opinion.

Although neither the board nor the Ombudsman would be bound by this opinion, it would have significant influence in resolving the complaint. I am prepared to undertake this action in appropriate cases. However, while this may be of benefit to my

office and the board, it does not address the systemic problem. I will certainly raise this issue with the new corporate board and report the results of my deliberations to your committee.

The third problem is a most critical issue. What I am asking you to consider is the method by which the board rates permanent disability awards. Under the current system, the Workers' Compensation Board has a rating schedule to assist in the assessment of such awards. The schedule is an attempt to measure the loss of physical function of a particular part of the body.

For example, a completely immobile lower back would be rated at approximately 30 per cent. No regard is given to the nature of the worker's pre-accident employment or his chances for rehabilitation. For your benefit, I have available copies of the permanent disability rating schedule.

Mr. Bell: Dr. Hill, may I just stop you there for a moment?

There was some material distributed this morning. I think we should make sure the members have it and know to what you just referred. Can you show us what it is?

Mrs. Catton: It is this document.

Dr. Hill: With the four holes on the top.

Mr. Bell: Hold that up again.

Mrs. Catton: Mr. Decker distributed it this morning, I think.

Mr. Bell: Just a minute. I am sorry, I have it. Somebody has written "Permanent Disability Rating" on the top. Is this the old one?

Mrs. Catton: It is currently in use.

Mr. Bell: Yes. Mr. Warrington referred to an update, did he?

Mrs. Catton: Yes.

Mr. Bell: Which has not yet been formalized or received?

Mrs. Catton: That is correct.

Mr. Bell: So you cannot comment on that today?

Mrs. Catton: On the update?

Mr. Bell: Yes.

Mrs. Catton: No.

Mr. Bell: I am sorry, Dr. Hill. I just wanted to make sure that your comments--

Dr. Hill: Shall I continue, Mr. Chairman?

Mr. Chairman: Yes.

Dr. Hill: I am going to the bottom of page 5.

When a worker is injured, the board's physicians assess the degree of disability using this rating schedule as a guide to determine the amount of permanent disability award he or she will receive. By way of example, a keypunch operator who has lost two fingers would receive approximately a five per cent permanent disability award. Conversely, a labourer would receive exactly the same award for the same disability. Unfortunately, the keypunch operator is more significantly handicapped by the disability than is the labourer.

The most common complaint and the most common problem that is seen in this area is the 55-year-old bricklayer who suffers a significant back injury, which results in a 30 per cent permanent disability rating. Unfortunately, the worker's skill requires that he have full use of his back; therefore, he is not appropriately compensated by this rating system.

The entire workers' compensation system was reviewed in 1980 by Paul Weiler, a lawyer who was a professor in Canadian studies at the Harvard law school. Professor Weiler, when he studied this issue, had the following comments on the current rating system:

"The notorious 'meat chart' is a logical result dictating that the loss of an arm will produce a pension benefit of 70 per cent of the previous earnings, the loss of a leg 50 per cent and so on. It is child's play to sketch examples which show the anomalous and even absurd results. A staff lawyer who loses his left hand (perhaps in a car accident while driving to court) would receive a lifetime pension much higher in amount than would a labourer because of the difference in their previous earnings to which the percentage is applied. This is so, even though the lawyer suffered no long-term income loss at all, while the labourer, who might be theoretically capable of performing a different job, might be unable to find suitable and available work because of his personal characteristics (age, literacy or skills) or environmental factors (geographic location or economic conditions).

"Be that as it may, the central ingredient of the workers' compensation has now totally lost any legitimacy which it might have ever had. People no longer tolerate the inequities in individual cases which are produced by a system of average 'rough justice.' Using the earlier example, it is obvious that the labourer and his family cannot survive on a pension of a fraction of his previous income. The same act which only offers the façade of adequate compensation for his real life economic losses also denies him the right of access to courts to try and recover the difference."

In conclusion, Paul Weiler stated: "...the nub of our problem is that we have been trying to do two things with one instrument. We want to make up earnings which have been lost from

work and at the same time provide some redress for the serious impact of a permanent physical disability on an injured worker's nonworking life. The result is that a permanent partial disability award performs neither of these tasks very well. In principle the solution appears simple. We should have two distinct benefits in a situation each tailored especially for its own purpose."

Professor Weiler then goes on to explain a dual system of compensation which would provide for a lump sum payment for the physical disability and an ongoing wage loss benefit package in applicable cases. The standing committee on resources development, which studied Professor Weiler's proposals, supported his recommendations for a dual system of compensation. These proposals were not, however, included in amendments to the Workers' Compensation Act.

My predecessor, the Honourable Donald Morand, raised this issue with a select committee in 1980 and recommended another solution to the problem. Specifically, he felt the board had unreasonably interpreted the section of the act providing for permanent disability awards and felt it was completely within the board's purview not only to assess the physical loss but also to consider other factors when determining the degree of disability.

11:30' a.m.

In December 1980 the select committee supported the recommendation of the Ombudsman as it related to his interpretation of subsection 42(1). Specifically, the select committee stated:

"The Workmen's Compensation Board has historically interpreted this section as permitting the payment of benefits to workmen in amounts which are proportionately higher than the actual impairment of earning capacity. It must follow that that interpretation to be truly equitable must also permit the payment of benefits which actually reflect the impairment of one's earning capacity."

Accordingly, the committee recommended that the Workers' Compensation Board revoke its decision in a particular case and grant an increased award to the injured worker.

On the basis of this recommendation, Mr. Morand then made recommendations in a further 135 cases, asking the board to reconsider each complaint, bearing in mind other factors when assessing the permanent disability award. The Workers' Compensation Board declined to implement these recommendations. When the committee's report was debated in the Legislature, the recommendation I previously quoted was not accepted.

For your purposes, however, it is of interest to note what the former leader of the Liberal Party, Dr. Stuart Smith, had to say on this matter during the debate on May 14, 1981:

"To say that a disc is a disc is a disc, no matter in what back the disc happens to have been displaced, or that a thumb is a thumb is a thumb, no matter in what arm that thumb has been

injured or in what person, in what family or in what circumstances, is the narrowest kind of meat chart approach and is totally wrong. Not only is it wrong--and therefore new legislation should be brought in to change it--it is not even necessary under the present legislation."

To support his position and his interpretation and that of the WCB, the then Minister of Labour, Dr. Robert Elgie, relied on two legal opinions, one from the then Deputy Attorney General and one from legal counsel, J. J. Robinette. On the basis of these legal opinions, the recommendation was not supported.

As a result of these deliberations and the fact that for the first time the Legislature had decided not to accept the recommendation of the select committee, the committee in its ninth report made a further recommendation. It recommended that cabinet refer the appropriate section to the Supreme Court of Ontario for consideration and interpretation. The committee also recommended that the Minister of Labour include a provision in the new workers' compensation legislation to provide for a retroactive payment of benefits to such workers as were represented by the 135 in the Ombudsman's previous report. The Attorney General at that time declined to accept the recommendation of the committee.

I am often faced with cases where a person who is totally unemployable is in receipt of a 30 per cent or 40 per cent pension. These people, but for the accident, would have been able to continue working. Their lack of skills and training and their age have precluded them from continuing in the work force. I have cases of people who had specific skills, such as bricklaying, that enabled them to earn a good living but who, because of a back disability, are unable to carry out their trade, and they suffer a significant reduction in their earning power. It seems to me unjust and in conflict with the concept of workers' compensation that someone who is no longer able to perform his regular work because of a work-related injury should suffer a significant decrease in his standard of living.

We are now left with the problem that approximately 25 per cent of the people, or about 100 people, who attend my office with complaints against the Workers' Compensation Board complain about permanent disability awards. In 1984, 186 workers, or approximately 20 per cent of the decisions of the appeal board, dealt with permanent disability.

I think the matter can be resolved by a more liberal interpretation of the current section of the act. This matter has the potential to affect about 60,000 workers in Ontario who are currently receiving workers' compensation pensions. It is of significant importance that the interpretation of this section be referred to the Supreme Court of Ontario. It is certainly open to you gentlemen to make that recommendation. On the other hand, it is also open to you to make a recommendation that the Minister of Labour review the Weiler report and the report of the standing committee on resources development with a view to amending the legislation to provide for an equitable system of permanent disability ratings.

It is my understanding that the board is currently reviewing its permanent disability rating schedule to determine if the schedule itself is adequate. In my view, this is not enough. Whether or not the schedule itself is appropriate does not deal with the variety of circumstances that must be considered when assessing the worker's impaired earning capacity.

An equitable solution to this problem would substantially reduce the flow of such cases to my office and would significantly reduce the number of appeals. It is a problem of great significance to the injured workers of this province, and it is time for the system not only to work properly and equitably but also to be seen to do so.

I have, on my right, Mrs. Catton, who is assistant director, and Ms. Linda Bohnen, my counsel, to assist in answering questions.

Mr. Bell: Dr. Hill, there are four issues here. In your address, you refer to the first two, the competition between legal opinions, so-called, and the binding effect of legal precedent, as issues you are going to raise with the new corporate board at the first opportunity. Does that put the committee in a position where it should probably wait upon those discussions before deciding to jump into this fray any more than it has?

Dr. Hill: It might be helpful if we first had a chance to initiate those discussions and then come back to you.

Mr. Bell: That is right. I now regret that you did not go first, sir, because what is apparent is that you are not asking on the legal precedent issue that the board be bound.

Dr. Hill: No.

Mr. Bell: You are saying at page 2 that the board should not be precluded. What you are saying is the board should avail itself of the benefit of the wisdom of our court system.

Dr. Hill: We think it should be reflected in the writings and the reasoned discussions coming before the board and related to us. We would like to see that reflected.

Mr. Bell: At the appropriate time I would invite Mr. Warrington and/or Mr. Emmink to comment, but I would think you would not have any problem getting their agreement today that the board should benefit from the wisdom of our court system, as and when appropriate, and how it does that in decisions is a matter that has to be determined by the particular decision.

I tend to agree with you. We have to have you address the two matters with the new corporate board and report back to the committee as soon as possible after those discussions on what has happened. It might be unproductive for the committee to be involved at this time, except the committee is already on record, last year and today, as to certain of these things.

May I go to the section 43 issue? You start that at page 5, and you go down through, after the comments of Paul Weiler, Donald

Morand and this committee, to your recommendation to this committee that it restate in its next report the recommendation that it made to the Attorney General and/or the cabinet, that it refer the matter under the Constitutional Questions Act.

Members of the committee, just to complete your background, at page 11 of your predecessor's 10th report, after reporting that the Deputy Attorney General and the Attorney General did not intend to refer the matter, the committee said this:

"The committee is disappointed that the court will not be utilized to resolve the differing legal opinions which exist respecting this section of the Workmen's Compensation Act. The legal uncertainty created by the differing legal opinions will continue."

11:40 a.m.

You have included, in your materials distributed today, copies of John Robinette's opinion and copies of Allan Leal's opinion, both of whom, as you have said, support the interpretation that the board has placed on the section. This committee, as a matter of record, has respectfully said it disagrees with that.

That may be putting it too strongly. I think what this committee has said is yes, there are two legal opinions, but there are also some differing legal opinions that exist; and that is the classic situation for the Constitutional Questions Act, just as another of John Robinette's opinions is going to be considered later this month on another piece of intended legislation.

You are asking us quite bluntly to put that recommendation again to the House.

Dr. Hill: Yes.

Mrs. Catton: That is exactly what we are asking the committee to do.

Mr. Bell: Do I understand it correctly that this is not a situation that will disappear with the new legislation?

Mrs. Catton: No.

Mr. Bell: Does the figure of 60,000 workers in Ontario that is in your statement represent the approximate number of workers who may be affected by this?

Mrs. Catton: It represents the approximate number of workers currently receiving pensions.

Mr. Bell: Oh. Is it a fact that if the act is interpreted in the way you believe it should be, the effect will be to increase the pensions receivable by all or a substantial portion of those 60,000 persons?

Mrs. Catton: It has the potential to increase some of the pensions.

Mr. Bell: Do we have any idea? Maybe Mr. Warrington is the best one to answer this. Is there any handle on what the impact will be?

Mrs. Catton: The only handle I can give you is that together with this information was distributed a study that was conducted by the board in 1984 for Professor Weiler. What that indicates is that although the wage loss of those people on pensions equals closely the average permanent disabilities assessment, about 40 per cent of the people on pensions are unemployed. Of the 60 per cent of people employed, they are basically on average being compensated fairly.

Mr. Bell: So it may affect 20,000 people.

Mrs. Catton: That is right.

Mr. Bell: Mr. Warrington, can you butt in and help? Have you assessed? I get the sense this issue does not revolve around whose legal opinion is preferable; it revolves around dollars and cents and the implications of such an interpretation in dollar terms are substantial.

Mr. Warrington: That is correct.

Mr. Bell: Have you done any studies or projections or assessments of what dollar value we are talking about?

Mr. Warrington: Not to my knowledge. Maybe Mr. Emmink would know.

Mr. Emmink: There have been some attempts to do this for the resources development committee. As a matter of fact, the study Mrs. Catton referred to was one that was commissioned by Professor Weiler. The results of that study were not audited, and therefore we would hesitate to have anyone draw conclusions from it. What has not been said, though, is that while some people may get more under the system, some people are going to get less. It was my understanding that the concept opposed by Professor Weiler was soundly denounced by injured workers' groups. That was one of the reasons why it was not included in Bill 101.

Mr. Bell: These are questions I will confess substantially out of ignorance. Is the effect of the Weiler approach similar to the effect of the Ombudsman interpretation?

Mr. Emmink: Again, as I understand it, the proposal which the Ombudsman would like the board to accept is basically that where there is wage loss, you compensate and where there is no wage loss, you do not. This places us in a position where a paraplegic who is back at work without a wage loss would not receive anything. On the other hand, a bricklayer who loses a hand would probably receive a full total pension. So there are the two sides.

Mr. Bell: I guess some people might say what is wrong with that, but that is for another forum.

Mr. Emmink: That is for the legislators, I suppose.

Ms. Bohnen: The system proposed by Professor Weiler, which was not placed in the legislation, of course, would have resulted in very far reaching changes to workers' compensation in the province, and various groups were opposed to it for a variety of reasons. What we are asking the committee to recommend now would not result in imposing the Weiler system in the province. It would result in what we think would be a more equitable interpretation of the current section.

Mr. Bell: Simply stated, it expands the discretion that you exercise in assessing under that section.

Ms. Bohnen: Exactly. We are not asking for the Weiler scheme.

Mr. Bell: In the insurance industry, they call it pigeonholing. Do not pigeonhole injury A to compensation B, but look at the person and the circumstances.

Ms. Bohnen: What I wanted to say was that we are not asking, through this recommendation, that the Weiler system be legislated or judicially imposed in Ontario. We are merely asking that, as Mr. Bell says, the board be given a wider discretion under subsection 43(1).

Mr. Bell: After the Legislature decided not to support its recommendation, the committee decided, implicit in the part of its ninth report that I read, to express disappointment, but not to do anything else. Quite frankly, I cannot remember why that was done, and I do not think anyone in this room can remember.

Tell us why the committee should refer back with another recommendation? What has changed? What has happened?

Mrs. Catton: Certainly when the committee decided not to do anything, there was an expectation that Professor Weiler's study would make significant changes to the system. That expectation continued until the government introduced Bill 101, which I guess was about a year and a half ago.

When those specific changes on permanent disability ratings were not included, the problem continued. I think everyone expected some significant changes to that system, and I would suggest the committee probably thought there would be no point in pursuing it because the matter was going to be corrected by enacting those.

Mr. Bell: Are you saying the legislation just does not cure the problem you had addressed?

Mrs. Catton: No, and also distributed was the new section and the new legislation. It is now section 45, and it remains exactly the same as the previous section. The only difference is that the earnings figure is now 90 per cent of net. We base the percentage on 90 per cent of net as opposed to 75 per cent of gross.

Mr. Bell: Can each of these workers in Ontario who are receiving the benefit as assessed under the board's method make an application under the new legislation to have the benefits reassessed?

Mrs. Catton: There is no other system. It is always open to ask for reassessment.

Mr. Bell: If that was sought by a worker in this position, who would ultimately do the reassessment?

Mrs. Catton: The board.

Mr. Bell: The new board? The new decision-making vehicles that have been set up?

Mrs. Catton: Let us clarify that to begin with. There is a new appeal system. The board stands as it always has. There will be new corporate board members, but there is no new board. Decisions can be appealed to an independent tribunal, but that does not have any effect on the actual ongoing decisions made every day.

Mr. Bell: In terms of individuals, if this were done, would there be fresh minds, new minds, different minds looking at the same problem?

Mrs. Catton: For the assessments, no.

Mr. Bell: For the interpretation?

11:50 a.m.

Mrs. Catton: It is open to the new tribunal to raise the question of interpretation with the new corporate board. But as I understand it, the legislation leaves to the corporate board the decision to implement a different interpretation.

Mr. Bell: According to what you say, the bottom line is there has been a change of circumstances between the committee's comments in its ninth report and today. That change is that the expectations of the Weiler study and Bill 101 do not materialize.

Mrs. Catton: That is right.

Mr. Bell: You would expect the committee might be concerned to try to have some relief given in those circumstances.

Mrs. Catton: That is right.

Ms. Bohnen: There are a couple of points I would like to raise. From some of your comments, Mr. Bell, and some others that have been made today, we have the impression it is felt that Bill 101 and, in particular, the appeals tribunal will rectify a lot of the problems we have pointed out.

Mrs. Catton has been trying to explain to you that this may not be the case. The problems in interpretation of the legislation

remain and the Workers' Compensation Board remains the same, except for a new corporate board. The appeals tribunal, which will be dealing with individual cases, does not have a legislative mandate to change interpretations by the board of its own legislation.

These are still very important problems that exist today. They cannot be deferred just because, come October 1, an appeals tribunal will be in existence.

Mr. Bell: Now you have set us back to where we were before Dr. Hill said we should wait.

Ms. Bohnen: Oh, I am sorry.

Mr. Bell: On the two issues of the legal precedent and the competing medical opinions, if Dr. Hill and a new corporate board can see their way around that problem, why do you need this committee interfering?

Ms. Bohnen: I am sorry, you are quite right. With respect to those problems--

Mr. Bell: You are telling us, regarding the last thing, section 43, "Do not hope things are going to change with a new corporate board, because they may not."

Ms. Bohnen: And do not hope that all problems will vanish because of an appeals tribunal. That is not the case.

Mr. Polsinelli: Could I get clarification on one point? My recollection of the Weiler recommendations is that his wage-loss system would require almost an annual review on the part of the board to see whether wage loss was continuing. Once the initial permanent disability had been established at a future time--two, three, four, five years down the line--the individual is no longer suffering the real wage loss.

I understood his permanent disability pension would be reviewed and lowered based on his actual earnings at that time. I understood that was the principal objection the injured workers' groups had to those recommendations.

Mrs. Catton: As I understand it, an injured worker would get a lump-sum payment for the actual physical disability and continue to receive benefits if a wage loss continued. So the injured worker would have money up front for the physical disability and would continue to be compensated for the real loss of earnings.

Mr. Polsinelli: If the loss of earnings was no longer there at some future point, the amount of benefits the worker would be receiving from the board would be decreased based on actual earnings in that period.

Mrs. Catton: But he has already received a lump sum.

Mr. Polsinelli: Yes, he would have received a lump sum.

You are recommending that the board take a more liberal view of section 43 in calculating the permanent disability pension at the outset. In effect, it would look at a wage-loss system as of that period when the worker suffered the disability. The board would calculate a permanent disability pension based on the wage loss of that period without taking into consideration any future wage loss.

If I understand it correctly, if a more liberal interpretation of section 43 is taken as of a particular period and the board does increase the permanent disability pension based on the fact that the person is deemed to be 100 per cent unemployable, even though his injury, according to your clinical rating system, is only a 40 per cent disability. At that point, the board considers this more liberalized approach, that in fact it is a total disability, because in this person's situation he cannot realistically find other employment. The board then calculates a permanent disability pension which would be higher than the one provided by the clinical rating system, but that would not change in the future if that person were able to find some type of meaningful employment to actually lower his wage loss.

Mrs. Catton: The board has the discretion under that section to determine the length of time for which the benefit will be paid.

Mr. Polsinelli: Sorry, I saw a nod on this side.

Mr. Emmink: I think it is for life, is it not?

Mrs. Catton: No.

Mr. Polsinelli: It is also my understanding that once the permanent disability pension was calculated it was for life.

Mrs. Catton: The board has reduced permanent disability awards in the past.

Mr. Polsinelli: Reduced?

Mrs. Catton: Yes. It says, "The compensation shall be a weekly or other periodic payment during the lifetime of the worker or such other period as the board may fix." It is not a guarantee of a lifetime award. If the board has the discretion to fix the duration--

Mr. Polsinelli: That puzzles me even further. Are you recommending that the board move away from setting lifetime awards and pensions? If that is your recommendation, that is exactly what the injured workers' groups were against in the Weiler recommendations.

Mrs. Catton: We are recommending there be some kind of rational explanation for permanent disability awards. You might want to call them something else. People should be compensated for their impaired earning capacity. If they are successful at being rehabilitated, then their capacity is not necessarily impaired. First of all, they should be compensated for their physical disability.

There are two questions that have to be answered, in our mind. First, is there a physical disability? If there is, the person should be compensated for that. Then the board has to direct its mind to the way that has impaired earning capacity.

Mr. Polsinelli: I am not disputing the principle or the problem you have outlined. You have done that in very succinct and clear terms. That is the problem, and I agree with your theoretical concept as to how it should be resolved. What I am questioning is your recommendation that section 43 should be given an initial, more liberal interpretation.

I question what the ramifications would be. Are they plausible within the system we have? Are you saying that if a more liberal interpretation of section 43 is made at the outset, when the permanent disability award is calculated, it remains for life and the board should take into consideration a wage-loss analysis in calculating the permanent disability?

Or are you saying we should move away from a permanent disability award for life, and the board should set it for a fixed period to determine whether or not the wage loss continues? It is ambiguous to me what your recommendation is. I understand the problem. I just do not understand your solution.

Mrs. Catton: I think we are closer to the second option, that there be an award for a permanent disability and wage-loss payments when there is a wage loss. This might reduce some people's benefits. It has the potential to do that. It also has the potential to substantially benefit those people who suffer the most significant impairment, and we think that is a more equitable solution.

Mr. Polsinelli: So the Ombudsman's office is saying the Weiler recommendations are appropriate, that we move into a wage-loss system with a lump-sum payment for the injury plus payments that would vary in future periods, depending on whether or not the actual wage loss continued.

Mrs. Catton: That seems like a rational approach to us, but we have not specifically made that kind of recommendation.

Mr. Polsinelli: I am still ambiguous as to what your recommendation is. You are suggesting a more liberal interpretation of section 43, and I appreciate that. I am trying to follow the logical ramifications.

Mr. Bell: Can I assist?

Mr. Polsinelli: Please.

12 noon

Mr. Bell: This arose out of two or three actual cases. I think all Dr. Hill and his staff are asking the board to do when somebody is injured at work and cannot return, in any event the earning capacity has diminished, is assess that person's actual circumstances to determine the amount of money received, whether

it be a lump sum, periodic or a combination, and that you do not have regard to a chart.

What did we use? The Glenn Gould and the hands case, that Glenn Gould, God rest his soul, had lost his right hand and had paid into the system. It would be absurd, as Weiler uses the lawyer and the labourer, to assess him on subsection 43(1). You have to assess that man, that loss.

Dr. Hill does not want to tell the board how much money should be paid in each circumstance, but he wants the board to do an actual job as opposed to a--

Mr. Philip: You are suggesting option 1, but Mrs. Catton said that she still seeks option 2.

Mr. Bell: She is saying it now; she did not say it before.

Mr. Polsinelli: I understand what the problem is and I understand what Dr. Hill is saying with respect to determining the disability award that should be given to an individual, not because of the physical injury that he has received but because of his loss of earning capacity; I understand that.

What I am asking is, does the award that is given continue for life or does it continue only as the wage loss continues? If a 55-year-old construction worker has a back injury, under the clinical rating system he would be rated at 30 per cent disability. In actual fact, it is 100 per cent disability because this person is not retrainable and cannot go into another position. He is, for all practical purposes, unemployable.

Under Dr. Hill's new system, this person would be rated as if he had a 100 per cent disability because he just cannot find any other work, he cannot be retrained, etc. I appreciate that; that person should be rated at 100 per cent disability because it is taken into consideration that, at that time, he has a 100 per cent wage loss.

My question to Dr. Hill is, supposing this construction worker, who was 55, had been assessed at 100 per cent disability, and five years down the line manages to go into retraining or establishes his own business or his foreseeable wage loss of five years ago has not been realized because five years later he is a productive member of the work force, will the award that the board gave five years prior to that be reviewed or will that award have been fixed for life?

I want to understand whether you are talking about a method of calculating a lifetime pension or whether your recommendations are closer to Weiler's recommendations which say if there is a wage loss, we compensate, but if that wage loss no longer exists, then we reduce your compensation.

Ms. Bohnen: First, we are not prepared to say whether our recommendation here is Weiler or anything else. We do not have a problem with the example you gave, with a worker five or 10

years down the line who has rehabilitated himself, etc., facing a possible reduction in his permanent disability award.

What we would like to say is that we still firmly believe that at the time when an adjudication or an assessment is made by the board it is far preferable for the board to have a proper discretion to make an appropriate assessment than to be hindered so that all it can do is work out what is called in the trade the meat chart.

If, down the road, there are administrative repercussions which may well have the effect of reducing some workers' awards, then we have to be prepared to live with that and to expect the board to make the fair and just determinations at that time. But it is not better to say, "No, we are stuck with the meat chart, that is the best we can do," and undercompensate many workers in the province because we are afraid of those repercussions down the line.

Mr. Henderson: The section Mrs. Catton read referred to "lifetime or such period of time as the board may affix." It was not clear to me whether there is flexibility to review and revise the decision at some point down the road. Would it be in the spirit of what the Ombudsman is proposing that there be a more liberal interpretation and less of the so-called meat chart approach, but perhaps more open-ended durations?

The concern is sometimes expressed that giving somebody a permanent disability is a disincentive to rehabilitation and re-employment. I have encountered situations, clinically, where that seemed to be the case. Is a more liberal approach, combined with a more open-ended time period, so that whatever may be set up for the next two or three years will not necessarily be there in 10 years or whatever, the kind of idea you are getting at in your suggestion?

Mrs. Catton: That is what we are getting at. In fairness, it is not the Ombudsman's position to be making legislation. He does not have access to the actuarial tables. He does not have the costs. It is a political decision. He is pointing out a problem that causes him great concern. It is the subject of a number of appeals and disagreements with injured workers and the Workers' Compensation Board, and it is a problem he thinks should be addressed.

There is a problem in reducing people's benefits. You cannot deny that. There is also a serious problem in the costs of this. We do not know what the costs are. We do not know how many people are being overcompensated now because they have returned to full employment, are not suffering any wage loss and may not have received as much in a lump sum payment as they are currently receiving.

Mr. Henderson: The difficulty is that at the moment it is thought of as reducing somebody's benefits, whereas it ought to be set up so that it is deemed to be a benefit for a certain period of time. Then it will be reassessed so that if a change is made, it is not felt to be reducing a benefit but simply moving on to the next phase of compensation.

Ms. Bohnen: It might be useful to bear in mind that the act provides for temporary benefits to be paid and for rehabilitation to be conducted. The permanent disability award is not assessed until it is believed that the worker's condition is stable. There are other aspects of the board's programs to take into account some of these concerns.

Mr. Baetz: I do not recall all of the debate that was generated by the Weiler report, but I participated in some of it. We are getting into some of the very fundamental issues, controversies and dilemmas that were confronted by the Weiler report. There was a natural knee-jerk abhorrence to the meat chart approach.

When you get into the matter of assessing what should be the permanent disability level, as was pointed out here, what happens if two, three, or five years down the line, through retraining or whatever, income is once again generated? It could be more income than the worker had before the accident. Because of that, you are almost forced into saying that at that point we should in fairness cut back on the permanent disability benefits. When you do that, you get into the business of income testing. It gets to be a horrendous administrative nightmare.

12:10 p.m.

My memory is not totally 100 per cent in this, but I do remember many very difficult questions arose. I am trying to respond to the recommendation of the Ombudsman here that this committee maybe should take some action to get some body, whether it is the Legislature, the standing committee on resources development, the Minister of Labour or whoever, to look at this again.

Maybe that is as far as this committee should go at this point, but I would hesitate to support the idea that we sort of holus-bolus come out and say, "Look, the Weiler thing was the right way to go, we are all for it, and get on with it." I would certainly find difficulty doing that.

Mrs. Catton: I think Dr. Hill recognizes that in the statement. He put forward two alternatives to a problem he saw. One was recommending that this committee approach the Minister of Labour to deal with this problem again, because it has not gone away, or perhaps to go to the courts for an interpretation. Certainly it is a matter that deserves more study and has not gone away. It needs to be corrected one way or the other.

Mr. Baetz: I should also point out, and it has been mentioned here by a few others, that the one thing I do recall is that the injured workers' groups themselves had very major reservations about drastic departure from the current system. Maybe it is on the basis that a bird in the hand is worth two in the bush, and better the devil you know than the one you do not. I know there were real reservations on their part.

The search for truth and justice is never ending. Maybe this committee somehow or other should--and I guess the chairman will

be discussing this later on anyway--see what can be done to reopen the discussions.

Mr. Polsinelli: For the benefit of the committee and for the benefit of the Office of the Ombudsman, as parliamentary assistant to the Minister of Labour, I can assure the Ombudsman that the minister is well aware of this problem and has not let it sit on the shelf but is tackling it. If the purpose of this whole exercise is to make the minister aware that the Office of the Ombudsman is concerned about this problem, rest assured that he is aware and is taking action.

What I tried to point out in my interjections and my discussions was that the solution is not a simple one. The solution is a very complex one and has very complex ramifications. As such, a blanket recommendation that the board merely give a more liberal interpretation to section 43, without an actual consideration of the consequences and ramifications, is an oversimplified solution. Much further study is required. We are in the process of looking at the problem, and I am sure the minister will in the near future be making some recommendations.

Mr. Bell: Mr. Chairman, can I do something I have not done before? Can I ask you to educate me if--

Mr. Polsinelli: That is very different.

Mr. Bell: Yes, it will be, I assure you, because I profess substantial ignorance in this area. Let us assume for the moment that section 43, as it is currently written, continues and that nothing changes as to the board's discretion vis-à-vis whether benefits are to be ongoing indefinitely, reduced or not reduced. Let us say it goes to the courts and the courts say, "No, there should be a more liberal interpretation and, yes, you take in all of the factors and assess an amount." The only implication is that in the majority of circumstances the benefit will be higher.

For practical purposes, what happens now? If the board comes along with the new guidelines on how it is to interpret and assess, it interprets based on the actual wage loss. So instead of \$200 a month, this person now gets \$450 a month. On a long term, what are the implications for that under the current legislation?

Mr. Polsinelli: I would defer to the board to answer that. I have always been of the personal opinion that the discretion is within the board to provide a more legal interpretation of section 43 and that it has not done that as a policy matter.

Mr. Bell: That is the issue, but your concern is to know what are the long-term implications of this. I would like to know that too. If the effect of a liberal interpretation is to give a person double the benefits he or she is currently receiving, Mr. Warrington, what are the long-term implications of that? Is that going to be an indefinite increase or is that subject to adjustments up or down later?

Mr. Warrington: I really cannot answer that, but to me it seems obvious, Mr. Bell, that there would be substantial increases in cost.

Mr. Bell: Immediately, I appreciate that, but our question now is whether that will continue on an indefinite basis, or is that subject to a risk, I guess to voice the workers' concern, that this will be adjusted downwards at some later time?

Mr. Posinelli: My understanding, and I stand to be corrected, is that once a permanent disability award is given, that is it under the present system. That is for life.

Mr. Bell: Then that is what the Ombudsman is saying. The Ombudsman is not saying change anything except the manner in which you arrive at the benefit award.

Mr. Polsinelli: The Ombudsman, Mr. Bell, is also saying that if that wage loss does not continue, then there should be a possibility of reviewing it and reducing it. That is where I particularly take issue. That is where the injured workers have taken issue.

Mr. Bell: He is saying that for the first time today then. That has not been said before. Thank you. I think I understand.

Dr. Hill: I would just like to thank Mr. Polsinelli for his assurances in respect to the minister and in respect to the fact that you are looking at it, and to say that we will also be returning to the drawing board. I think a few of us must. It is a very serious matter and it has serious study and impact implications. I think there is no finality in our position and I appreciate the fact that we should have more time to review this more carefully.

Mr. Chairman: Is there any further discussion?

Mr. Emmink: Mr. Chairman, if I may raise a point of clarification for the board's own edification, do I understand correctly that the board does not technically have status in this question at this point in time?

Mr. Bell: On what question?

Mr. Emmink: The question of the further interpretation of subsection 43(1). Has the Ombudsman made a recommendation to the committee to do something and, if so, is the board affected?

Mr. Bell: You are affected, but you are not in the way that you are under subsection 22(3) of the act.

Mr. Emmink: Okay. So we are not a governmental organization adversely affected by virtue of this recommendation?

Mr. Bell: In my opinion, you are affected by what Dr. Hill has asked the committee to do, and that is to restate a recommendation.

Mr. Emmink: If that is so, then are we entitled to notice, or is this something that has occurred previously in the context of that one individual case that brought this matter to the committee's attention?

Mr. Bell: We are not in the context of an Ombudsman investigation and report. That is what I think you are asking.

Mr. Emmink: I am just asking for clarification.

Mr. Bell: The Ombudsman, as he is able to do, has asked this committee to repeat or restate something that is already done. He has done that on a number of occasions in other contexts in the past. The committee on those occasions has agreed or not agreed, depending on the circumstances.

I think you are really asking whether we should be jumping into this fray and put in our two cents. My answer to that is yes. If you think you would like to address the committee on any issues relevant to what Dr. Hill has asked, feel free to do so either now or at some time subsequent at our mutual convenience.

Mr. Emmink: I hear what you are saying. The only concern is, have the procedures set out in the Ombudsman Act been followed?

Mr. Bell: We are talking about committee procedures now. The answer to that question is yes.

Mr. Emmink: Then that answers my question. If we are to enter the fray, and if we are to get into the whole argument again of the interpretation of subsection 43(1), I would have to say on behalf of the board that we should have an opportunity to address that all over again.

Mr. Bell: Except that the issue has been quite narrowly defined. Does the committee restate that recommendation in another report or not, that is, the recommendation to the Attorney General and the Minister of Labour to refer the question of the interpretation of that section to the court under the Constitutional Questions Act?

Mr. Emmink: The original recommendation in that regard was not directed to the board, as I understood it. It was directed to the Ministry of Labour or the Ministry of the Attorney General.

Mr. Bell: If the committee should decide that it should restate it, I cannot see that it would be directed any differently.

Mr. Emmink: So there is no reason for the board to become involved because it is not a recommendation directed to it.

Mr. Bell: No, except that if the committee does restate it and if the government does agree and does refer it, you are going to be a party.

Mr. Emmink: At that point, definitely.

Mr. Bell: So you have an interest but it is not a defined or direct one right now.

Dr. Hill: I would simply say I accept the fact--and I think we all do--that it is not my job as Ombudsman to make government policy in this sense. It is my job to point out problems and to make suggestions, but it is not my job to step beyond that and make government policy.

Mr. Chairman: Is there any further statement or discussion? If not, the committee will adjourn until Monday at two o'clock. We will be meeting in committee room 2.

The committee adjourned at 12:22 p.m.

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Publication

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
MONDAY, SEPTEMBER 9, 1985



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Also taking part:

Poirier, J. (Prescott-Russell L)

Clerk: Decker, T.

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From the Office of the Ombudsman:

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Catton, N., Assistant Director, Special Services

Hill, Dr. D. G., Ombudsman

From the Workers' Compensation Board:

Emmink, A., Director of Hearings

McCracken, Dr. W. J., Consultant

Warrington, T. D., Vice-Chairman of Appeals

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, September 9, 1985

The committee met at 2:03 p.m. in committee room 2.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: I call on counsel to begin with, to lead off.

Mr. Bell: Thank you. I believe we completed the discussion Friday morning on the systemic concerns the Ombudsman addressed in his report. In two of those matters the Ombudsman intends to continue and pursue discussions with the board representatives on the new corporate board some time after the creation of that board in October.

In the other matter, one of particular significance, the Ombudsman has asked you to restate or resubmit a recommendation that your former select committee made in its ninth report, I believe, concerning a reference by cabinet under the Constitutional Questions Act as to the interpretation or scope of interpretation of section 43 of the act. I believe discussion was sufficiently complete that you are able to formulate your own conclusions on it and report later in your next report to the House.

Having concluded that discussion and the other housekeeping items of Friday, we now turn to the two remaining recommendation-denied cases involving the Workers' Compensation Board. Would you each turn to volume 2 of your material, tab 9, the second-last tab in the material?

While you are doing that, there are two other housecleaning items. Mr. Decker is going to distribute to each member a copy of the Divisional Court's recent decision involving the Ombudsman and the Ontario Labour Relations Board. I think tomorrow is an appropriate time to discuss that, when we get back to some more policy discussions involving the act, etc. If you have that, you can file it appropriately in your first volume.

The other matter has to do with scheduling. We are slightly behind, though not seriously. Today's agenda included only recommendation 14. It is my goal to do both recommendation 9 and recommendation 14 today. You all know how successful I am on predictions. To the extent that we have not concluded those cases today, we will return to them tomorrow afternoon rather than tomorrow morning. You have a series of representatives from different ministries attending tomorrow morning, and it was not practical or possible to reschedule those attendances from last Friday to now.

With that, back to recommendation 9. You have a detailed synopsis starting at the second page of that part, which

represents in general terms the positions of the parties, the relevant facts, etc. This is one case, however, in which it will probably assist you more to refer to the Ombudsman's actual report than to the synopsis, particularly the last couple of pages in that report, where he squarely puts the question and summarizes the real basis of his conclusion and recommendation. It has to do with a policy issue of exactly what standard the board actually applies or requires in coming to its decisions and whether that standard is appropriate in the circumstances.

This case, like recommendation 14, also involves somewhat a war of experts, a war of doctors' opinions and related and similar opinions; so you will have to weigh that.

In any event, with that general introduction, Dr. Hill will be assisted this afternoon by both Mrs. Catton and Ms. Bohnen.

2:10 p.m.

Dr. Hill: Mr. M worked in a tool and die factory for a number of years. His work required him to be exposed to a number of chemicals. It was his contention that as a result of his work he developed a liver disease for which he should have been compensated. About seven years after starting with this company, Mr. M began to suffer nosebleeds, nausea and feelings of tiredness. He sought medical attention, and a liver disease known as chronic hepatitis was diagnosed.

In 1979 he was unable to continue working and at that time submitted a claim to the Workers' Compensation Board. He died in 1984 of liver failure, secondary to his hepatoma. His claim before the Workers' Compensation board has been consistently denied. The cause of Mr. M's liver disease has been the subject of extensive consideration by various medical specialists. No one has been able to pinpoint the exact cause of his disease.

In my view, the main problem in this case is the Workers' Compensation Board's approach to the adjudication of industrial disease claims. The board requires that a causal relationship be established by medical standards before compensating workers. In my view, this is an unnecessarily rigorous standard. In my opinion, it is impossible in many situations to have clearly defined standards of exposure when determining entitlement.

To put this into perspective, you should recognize that there are more than 200,000 chemicals in the work place in the United States alone. What is even more staggering is that there are exposure standards for only one per cent of those 200,000 chemicals. To suggest that it is possible to have had conducted longitudinal studies of all the chemicals in the work place is, to me, unreasonable.

Unfortunately, it may be the case that only after the deaths of several people that the safety of certain chemicals can be established. In this case we have evidence to support the worker's position. Other possible known causes of the disease have been ruled out, and I do not believe it is reasonable for the board to demand from the injured worker a burden of proof that is

impossible to achieve. I therefore strongly urge you to support this complaint and to enter into a public debate about the approach on these kinds of cases.

Mr. Bell: Mrs. Catton, are you going to review in some detail the facts and the matters upon which the Ombudsman relies in support of his recommendation?

Mrs. Catton: Yes, I am. Mr. M, prior to his death, suffered from a postnecrotic type of cirrhosis with changes of chronic nonspecific hepatitis. The issue before you is, is there reasonable evidence to suggest that the disease arose out of his employment? To enable you to analyse the issue, I would like to explain the work, the chemicals in the work place and the medical evidence.

Specifically, Mr. M was exposed to kerosene, industrial alcohol containing both methanol and ethanol, Lawrson's Spray White E and a machine cleaner solvent and blue dye, which contain butyl cellusolve.

Mr. M began working in the tool and die factory in 1972. His job was described as a spot press operator and consisted of grinding and sanding the metal castings. Blue dye was used to emphasize the rough edges on the parts. Mr. M was required to clean those parts of the machine with alcohol and kerosene about twice a day. On occasion, he would use an air hose to clean out excessive amounts of alcohol. He would use a hose to blow the parts with compressed air and the alcohol would blow around.

It is important to note that Mr. M did this job for about 15 tool and die makers. Before he was hired and after he was laid off from his job and was unable to continue, the job of cleaning the moulds was made the responsibility of the individual tool and die makers. Therefore, there is no one else in this particular factory who had the same exposure as Mr. M to the same chemicals on a regular basis. This is not disputed by the employer or the board.

In the early years of his employment he was not provided with any protective clothing. He supplied his own paper mask, leather apron and cloth gloves. The mask did provide him protection from the dust arising from the grinding process, but it did not protect him from the fumes of the alcohol or from the fumes of the dye. In addition, when he put the dye on the different parts of the machine, he got dye all over his arms and his hands; it was not just a matter of putting on a small amount of dye.

The procedure in this factory has changed and excess kerosene is wiped up rather than blown away. This procedure was in part the result of the recommendation of the occupational health and safety people who entered into it later.

There are two sides to the medical evidence in this case. Our assessment of the medical evidence dealt first with the possible causes of Mr. M's disease. Dr. E, employed by the hospital's occupational health and safety clinic, reviewed the possible known causes for this chronic hepatitis. He listed them

as viral, alcohol-induced, drug-induced, toxic chemical-induced or idiosyncratic, the "we do not know" category.

According to Dr. E, there was no evidence to suggest the complainant suffered from either viral, alcohol or drug-induced hepatitis. This position was supported by Dr. D, a specialist in internal medicine, who first treated the complainant.

The board's physicians, Drs. J and K, appear to have agreed that there was no evidence for any other known cause for the disease. It is therefore our position that, of the known causes for this type of disability, all have been dismissed except for toxic exposure. The only other possibility is that Mr. M's disease was from unknown causes.

The medical opinions which discount a possible relationship between the work Mr. M was performing and his exposure are as follows:

Specifically, the board relied on Dr. F's opinion. Dr. F is a gastroenterologist. In his report he stated he was unable to find any apparent evidence of hepatotoxicity of any of the agents with which Mr. M was in contact. The appeal board placed considerable weight on this opinion.

In reaching the conclusion, Dr. F relied on the fact that Mr. M was involved in a dry metal grinding process. He did not detail any of the chemicals Mr. M came into contact with and appears to have based his opinion primarily on the fact that it was a dry metal grinding process. There is no dispute about that.

Dr. J, the industrial disease consultant for the Workers' Compensation Board, did not support a relationship. In her opinion, there was significant doubt about the amount of exposure Mr. M suffered. She stated: "To presume relationship of this liver complaint to solvent toxicity in a dry grinding operation would be more remote for the usual causes of this complaint, i.e., nutritional and viral.

This man was also referred to Dr. K, another industrial disease consultant for the Workers' Compensation Board. Her opinion was as follows:

"Overall, from a scientific/medical standpoint, there is no evidence to support chronic hepatitis being caused by occupational solvent exposure. The substances are well known in the industrial climate and over the years sufficient study has been done and chronic hepatitis has not been identified as an adverse health effect. I do not feel that there is sufficient evidence to support an occupational relationship in this worker's chronic hepatitis."

Those are the pieces of evidence which do not support the complainant's position. The following evidence we would categorize as neutral, being neither in favour of nor opposed to the complainant's physician.

After visiting the job site, Dr. C of the occupational health and safety branch of the Ministry of Labour reported that

"as the spot pressing operation is intermittent and the chemicals are used...intermittently, significant health hazard would not be anticipated provided proper work practices are maintained." At the same time, he suggested that employees should wear protective clothing, eye protection, impervious gloves and an organic vapour mask when using blue dye or cleaning with industrial solvents. None of these practices was employed during Mr. M's work history in his employment with the company.

The other important thing to note is that there was no direct ventilation in the spot pressing room until about a year before Mr. M retired. There was good ventilation in most of the factory but no direct ventilation over the area where he worked until about a year before he stopped working.

2:20 p.m.

There is also evidence for the other side of the argument. Dr. B, a specialist in internal medicine, originally treated Mr. M. He stated in a report in November 1979 that "it is possible that [Mr. M's] hepatitis is most likely due to exposure to different toxins and it is felt that further exposure may cause progression of his liver disease."

In a later report, the same doctor stated: "Therefore, 'in my view of this man's exposure to numerous toxins at work, the possibility still remains that this probably could be industrial exposure to various toxins that he works with. These include kerosene and other hepatotoxins, the details of which are not available to me."

There is also the opinion of Dr. E, associated with the occupational health clinic at the hospital. In a report to the board, he stated:

"The most likely explanation, therefore, is a prolonged exposure to not severely hepatotoxic agents." By the way, "hepatotoxic" means toxic to the liver. "Occupational exposures are immediately the most likely to fit into this category. This man did have exposure on a consistent basis with ethyl and methyl alcohol and other solvents at work. Alcohols will potentiate the hepatotoxic effects of other agents. The aromatic components of Stoddard's solvent or kerosene could be hepatotoxic. Butyl cellusolve in the dye he was using will, if absorbed through the skin, exert a hepatotoxic effect.

"His complete exposure history appears to be unknown. Although it was reported he could have used less solvent on his job, he appears in fact to have a fair amount of exposure, including wetting of his work clothes. Therefore, this man's liver disease is most likely due to occupational exposures, some of it at least solvent exposure. I do not have a better medical explanation."

The other evidence supportive of the complainant's position comes from Mr. D, an industrial hygienist with the same occupational health clinic. In his summation of the case, he stated:

"In view of the fact that [Mr. M] has had no previous history of liver disease, that he consumed very little alcohol, that there is evidence of a significant exposure to potentially hepatotoxic substances in his work place and that it is known that chronic active hepatitis can be caused by exposure to chemicals, I feel that there is a strong possibility that his disease is work-related. There is little likelihood of proving beyond doubt that Mr. M's clinical exposure is etiologically related to his disease. However, it seems probable that prolonged chemical exposure is involved."

The final piece of evidence in support of Mr. M's complaint comes from Dr. G, who stated in a report:

"To date there is no objective published scientific evidence to support a distinct cause and effect relationship between either chronic hepatitis or cirrhosis and the solvents to which [Mr. M] was exposed.... It is certainly not beyond the bounds of possibility that one or more as yet unidentified solvents contributed to the pathogenesis of such cases. Coupled with the observation that Mr. M's gamma GT improved after withdrawing from the work environment, in my judgement a cause and effect relationship cannot be absolutely excluded. Under the circumstances and after reviewing very carefully all the available data in this case, it is my feeling that [Mr. M] should receive the benefit of any doubt and his claim should be supported."

Mr. Henderson: Which doctor was that?

Mrs. Catton: Dr. G.

According to the Workers' Compensation Board, the appeal board's position can be summarized in its response:

"Though the board also recognizes the significance of this case, acceptance must be based on the presence of conclusive medical/scientific data that would attest to a cause-effect relationship.... Admittedly, the element of probability is strongly suggested in the statements of Drs. B and E, also Dr. D; however, other physicians who also methodically evaluated the information presented do not concur. The board further notes that Dr. G was of the opinion that Mr. M should receive the benefit of any doubt and that his claim should be supported. As in all cases, benefit of doubt is an administrative matter and is not one of medical prerogative."

"The board further believes that it is vitally important to say that the Workers' Compensation Board of Ontario has always been and continues to be a proactive body in the field of industrial disease. Although much is yet to be achieved in the area of industrial disease, the board has always been guided by the well-documented findings of medical and scientific research. To digress from this modus operandi could inflict irreparable damage to the board's credibility and place us in an untenable position."

In preparing the summary for the committee, the board stated--and you will see it in your summary; I think it is on page

F--that the preponderance of medical and scientific evidence does not support a relationship: "It is our position that there is no preponderance of medical or scientific information on this issue."

The Ombudsman in assessing this was guided by the words of Professor Weiler, who stated:

"The function of a general standard in a compensation program is to give diseased workers who satisfy it routine acceptance of their claim without requiring specific scientific proof that the disease came from work place exposure....

"While it is important that the board, in formulating general policy standards for compensating disease claims, draw a reasoned and responsible line, it is not essential that this be a scientifically demonstrable line."

In the Ombudsman's view, the evidence of Drs. B, E and G and Mr. D support a relationship. All other known causes of the disability have been ruled out. Dr. F did not address the chemicals to which Mr. M had been exposed and based his opinion on the absence of any toxins in the blinding process. Dr. J did not support a relationship, but appears not to have accepted the job description as accepted by the appeals board. Dr. K, the medical consultant at the board, offered no further suggestions.

The Ombudsman, therefore, found that the board's position was unreasonable and that Mr. M should have been granted entitlement.

Mr. Bell: I do not believe there is any issue as to the standard of proof required of the board in this case. If you note the chairman's response to your report--I am looking at pages 47 and 48 of the material--in the second sentence in that bottom paragraph on page 47, Mr. Alexander says: "...the board finds that the evidence presented does not substantiate exposure to hepatotoxic chemicals in employment and that Mr. M's liver disease was, in fact, causally related to his employment environment." That is their conclusion.

First, I want your comments on whether you agree with my conclusion when he says: "Though the board also recognizes the significance of this case, acceptance must be based on the presence of conclusive medical/scientific data that would attest to a cause-effect relationship being evident."

Mr. Callahan: Just so this makes sense, what is the onus--

Mr. Bell: I thought I knew. We are going to find out.

Do you take the board's position in this case that the burden they imposed was the scientific/medical burden?

Ms. Bohnen: We take the board to mean that, absent the evidence of published scientific literature establishing a relationship between a chemical to which this man could be proven

to have been exposed and chronic hepatitis, entitlement would not be granted. We think there is a dispute about the standard of proof.

Mr. Bell: No. What do you understand to have been the standard they employed in this case?

Ms. Bohnen: That there had to be conclusive medical/scientific data that would attest to a cause-effect relationship.

2:30 p.m.

Mr. Bell: All right. Let us approach it in Paul Weiler's language. If members will go to page 40 of the material, page 13 of Dr. Hill's report, the second short paragraph in that quotation says, "While it is important that the board, in formulating general policy standards for compensating disease claims, draw a reasoned and responsible line, it is not essential that this be a scientific demonstrable line."

Is it your position that the board, in this case, drew or required a scientifically demonstrable proof before it would compensate?

Ms. Bohnen: Yes.

Mr. Bell: To use Mr. Callahan's question, what proof is that? What burden of proof do you understand that is?

Ms. Bohnen: I cannot cite you a general rule, but applying it to the facts of this case--that is what I tried to say earlier--in our view, the board required published, scientific literature stating that there is a cause and effect relationship between any one of the chemicals this man was exposed to and chronic hepatitis.

Mr. Bell: Okay. Until we hear from Mr. Emmink and his colleagues, can we presume we can call that scientific/medical proof?

Ms. Bohnen: Yes.

Mr. Bell: Do you understand that to be something different from the burden of proof in a criminal context, beyond a reasonable doubt to a moral certainty?

Ms. Bohnen: We are talking about apples and oranges, it seems to me. The difficulty in this case is that there is no scientific literature conclusively proving or conclusively disproving a relationship between a chemical and chronic hepatitis. In a criminal case, the result does not generally flow from a lack of evidence and the interpretation to be given to that lack of evidence.

Mr. Bell: We are missing each other.

Ms. Bohnen: I think so.

Mr. Bell: The scientific/medical community has, at least the Workers' Compensation Board believes, a standard of proof--

Ms. Bohnen: Yes.

Mr. Bell: That standard of proof, if reached, will permit the scientist or the physician, or both, as the case may be, to say something is a fact.

Ms. Bohnen: Yes.

Mr. Bell: I do not think we have to belabour the point, but it is a rigorous standard, depending upon what the medical or what the scientific issue is. To get to the point where they will say something as a fact or with certainty requires rigorous testing, research, or whatever.

Ms. Bohnen: Yes.

Mr. Bell: Is that the standard you understand the board is effectively employing in this case? If it is, how does it relate to the standard that at least--well, not at least, but we are all familiar with it in the criminal setting, in the civil setting, or otherwise--I understood the board applied in all of its appeals?

Ms. Bohnen: Mr. Bell, do you not want to get away from a criminal or a civil test? This is a piece of legislation that is there to provide compensation for injured workers.

Mr. Bell: First of all, it is not for me to say what should or should not be the standard. The purpose of this exercise is to try to relate that standard, scientific/medical, to the standards of proof that we usually work with when dealing with administrative tribunals that exercise quasi-judicial functions.

Ms. Bohnen: We are getting into some difficulty because, as Mr. Callahan reminded me a minute ago, the question of standard of proof and the question of onus of proof overlap. But absent the scientific literature we believe the board is requiring here, and a court, such as the board, as I understand it, would have to consider the expert evidence presented to it. There is expert evidence here, as there would be in a litigation matter in which the same issue was raised, and it would not be open to the court to find for or against the plaintiff simply because there was no literature. It would have to consider the medical opinions presented to it.

Mr. Callahan: Excuse me. I am getting lost here.

Mr. Bell: You are not alone.

Mr. Callahan: On whom is the onus of proving a fact in a compensation case?

Mr. Bell: The appellants.

Mr. Callahan: So it is on the injured party?

Ms. Bohnen: Yes.

Mr. Callahan: If at the end of the case there is no evidence, other than possibility rather than probability, it is a nonsuit.

Mr. Bell: Except there is another thing that we are going to complicate this case with called the doctrine of benefit of the doubt.

Mr. Shymko: Can I have some clarification? Do we give benefit of the doubt to injured workers on back injury problems?

Ms. Bohnen: Yes.

Mr. Bell: Certainly.

Mr. Shymko: I believe we do give benefit of doubt to the workers, especially for back injuries.

Mr. Warrington: Throughout the board it is our policy.

Mr. Shymko: Our policy is not just back injuries. It would be industrial diseases as well?

Mr. Warrington: Yes.

Mr. Shymko: So benefit of doubt is given to the injured worker as policy?

Mr. Warrington: Under the policy.

Mr. Shymko: Under the policy.

Mr. Callahan: But how can you give benefit of the doubt if the onus of proving a fact to achieve a result is on the injured party? The way that works in a criminal case is that the onus is on the crown, and if the crown fails, the matter is dismissed. It would seem to me that if you put the onus on the injured party and he does not prove at least a reasonable doubt, his claim has gone.

Mr. Henderson: In replying to or commenting on the question Mr. Bell put, it seems to me that there is quite a big difference in my experience between the kind of standard of proof that physicians and medical scientists demand and what would be required in a court. I would say the medical standard is much more lenient in terms of a practising physician. If there is chicken pox going around and the kid has a rash, the physician makes a diagnosis of chicken pox. That really is pretty flimsy if you stop to think about it. I do not think any court would buy that kind of proof.

Scientific/medical proof is a little more rigorous, but it is still pretty much association, linking and so on. At least in my opinion, it is considerably more lenient than a court would accept. The point I was going to make has to do with the benefit

of the doubt thing. If a case is up in a teaching hospital for conference or rounds and two or three doctors say it is caused by etiology X, if the patient is hypertensive and two or three doctors say it is liver pathology and five or six doctors say, "I do not know; it is idiopathic," it is likely to be deemed to be that it is liver pathology. In other words, the benefit of the doubt would go away from the side that says, "We do not know," in favour of the side that says, "There is some evidence that we would take it to be such and such."

Perhaps these comments bear on the question Mr. Bell raised.

Mr. Shymko: I am still not clear on something in in the summary of point 4 in section E. Dr. G felt the complainant should receive the benefit of any doubt and his claim therefore should be supported. If it is the policy of the board to give the claimant the benefit of doubt in cases such as these, why have you not given that benefit of doubt to that particular complainant in this case?

Mr. Warrington: Because we did not believe the benefit of the doubt applied in this case.

Mr. Shymko: So you do not even accept the premise of any doubt existing? There is no doubt as far as you are concerned?

Mr. Warrington: That is correct.

Mr. Shymko: Okay. That clarifies my question.

2:40 p.m.

Mr. Callahan: If you cannot prove it one way and you cannot disprove it, how can that be?

Mr. Bell: If I can get my preliminaries out of the way, then perhaps the committee members will be able to put questions in a more specific way. I am not saying this very well, and in the light of Mr. Henderson's comments, I wonder whether I should be saying it at all.

Mrs. Catton, do you understand the Workers' Compensation Board's position to be that absent--let me repeat it--scientific medical data or literature, there will be no allowance of the claim?

Mrs. Catton: Yes.

Mr. Bell: That no other evidence of any nature or description, including medical opinions, will be acceptable to the board?

Mrs. Catton: That is my understanding.

Mr. Bell: Then, back to Mr. Callahan's question: We know what the board requires. Is that consistent with the burden of proof the board employs in its appeal process?

Mrs. Catton: No. It has a higher standard. In dealing with other questions of relationship, we have all seen a number of cases in which the board made a decision based on expert medical opinion presented to it by treating and staff physicians and did not require that there be scientific literature addressing the question.

Mr. Bell: May we have clear your office's position on what would happen in a court? Let us ignore the criminal process, because it is not relevant, but talk about a court of civil jurisdiction, such as the High Court of Justice. Is it your position that it would consider all the evidence to which you have referred the committee in formulating its decision whether the appropriate burden of proof has been met?

Mrs. Catton: I think it would, but I defer to your expertise in litigation. I would be ill advised to give a general opinion about that.

Mr. Bell: I do not believe the doctrine of benefit of the doubt is stated specifically--yes, it is, once, as an opinion in Dr. Hill's report--but I take it that you believe this is a case in which it should be applied.

Mrs. Catton: We think the major part of available evidence supports the complainant's position, so the benefit of doubt is not applicable.

Mr. Bell: So do we not have to worry about whether the evidence is approximately equal in weight.

Mrs. Catton: That is right.

Mr. Bell: You say it is on the side of the complainant.

Mrs. Catton: It is stronger.

Mr. Bell: However, the board says its weight is clearly on the side of no compensation.

Mrs. Catton: That is right.

Mr. Bell: That makes that issue easier for us.

Can you tell me the conditions and procedures of employment, as best you know them? In other words, what this person did, for how long, what chemicals he used and to which he was exposed, the degree of clothing and related equipment saturation--all that body of evidence you review in your report--and if that existed now in the work place, would the employer be required by some legal requirement, statutory, regulatory or otherwise, to change the conditions with specific reference to exposure to the chemicals?

Mrs. Catton: The occupational health and safety people from the Ministry of Labour issued orders under Ontario regulation 658 and recommended that the compressed-gas-blowing device not be used. They made further suggestions on the type of clothing and the kind of mask workers in that area should be provided with.

Mr. Bell: Did that bear any relationship to the potential toxicity or just the fact they did not want a man wearing inflammable clothing?

Mrs. Catton: They were there to inspect the situation, given Mr. M's complaint. I would assume they made the recommendation because they were concerned about the hepatotoxic effects of some of the chemicals.

Mr. Bell: But you are speculating.

Mrs. Catton: In addition, if you take Dr. C's opinion, he says that "as spotting press operation is intermittent and chemicals are used...intermittently, a significant health hazard would not be anticipated provided proper work practices are maintained." From there he goes on to explain what those proper work practices are.

In his statement he refers not only to the operation but also to the chemicals used; so I do not think it is a great stretch to suggest he felt those chemicals might have some effect. I do not think there is any disagreement that the butyl cellusolve, which is in the blue dye, could be hepatotoxic.

Mr. Bell: Can you help us in practical terms? What is the dollar value represented by your recommendation?

Mrs. Catton: I do not know. He has no entitlement at this stage.

Mr. Bell: For obvious reasons.

Mrs. Catton: He was off work for five years before he died. There is a two-step process in the adjudication of the claim. First of all, should he have been granted entitlement for all the period he was off work? Was he totally disabled? Whether his widow is entitled to benefits is another question that has not been addressed.

Mr. Bell: But in fairness to the board, do we not have to address those? The recommendation is that the decision in question be revoked and the late complainant granted entitlement for liver disease, as causally related to employment. As far as your recommendation goes, what do you say follows from a finding of entitlement?

Mrs. Catton: Our recommendation speaks to fairness to the complainant, not necessarily fairness to the board. We have a person who was severely disabled and is now dead. The question of how much money he should get is irrelevant once you establish a relationship, if you do that.

Ms. Bohnen: Mr. Bell, we would be presumptuous if we were to specify at this stage the monetary value of his entitlement. From what we know of the facts of the case, this case would present no particular assessment problem. This committee has stated on more than one occasion that assessment of disability pension level, temporary benefits level, etc., is the prerogative of the board.

Mr. Bell: Okay. We understand that then is implicit, that the assessment leading to compensation in some dollar amount is for the board.

Ms. Bohnen: Yes.

Mr. Bell: For what period of time? Or is that relevant to your recommendation?

Mrs. Catton: First of all, there is a second question that has to be answered. Did he die because of his exposure to these chemicals at work? All we are saying is that the original diagnosis of chronic hepatitis appears strongly to be related to his work environment. Whether the evidence supports that the cancer he eventually died from was a result of that chronic hepatitis is another question we have not addressed.

Mr. Bell: You are not dragging that question in now, are you?

Mrs. Catton: No, but that goes to the dollar amount of the award.

Mr. Bell: For practical purposes then, are we talking about the time the complainant terminated employment until death?

2:50 p.m.

Ms. Bohnen: I do not think we are in a position to address that, nor is it necessary to address it at this stage. It is no different from many other cases where the issue between the Ombudsman and the board is strictly one of entitlement. That having been established, the board then, with greater or lesser ease, assesses amounts and durations.

Mr. Bell: All right; as long as we understand that and you understand what I am doing. I am giving you the opportunity now, as you have done in the past in many cases, to tell us what you intend by the recommendation. As long as we know you do not intend to put parameters or limits on the amounts or for periods of time on the board, and it is left to the board's discretion pursuant to the assessment process, that helps the committee.

Mrs. Catton: If entitlement were to be granted, the complainant's family would then have the option, if it disagreed with the amount of entitlement, to appeal that through the normal channels. That would be a separate issue.

Mr. Bell: But that is not relevant to our consideration right now.

Mrs. Catton: No.

Mr. Bell: One of the opinions you line up in favour of the complainant is that of Mr. D, a specialist at the named hospital, who is not a doctor. Is that correct?

Mrs. Catton: That is right.

Mr. Bell: Does that person hold a PhD or other post-graduate degree in his or her specialty, do you know?

Mrs. Catton: Yes, a bachelor of science degree; his title is industrial hygienist. That is an occupational job title.

Mr. Bell: In Dr. Hill's report, after addressing and discussing the opinion of Mr. D, he then goes to Dr. E, who is a member of the same unit at the same hospital. It is not apparent from your report--I am referring specifically to page 32--whether Dr. E reviewed Mr. D's opinion. Do you know whether he did and whether he agreed with it in whole or in part or disagreed with it in whole or in part?

Mrs. Catton: He did review it and he agreed with it. He did give testimony at the appeal board hearing, as did Mr. D. Dr. L, who was the head of the occupational health unit--he is not referred to in this information--also reviewed Mr. D's report and did not disagree with it specifically.

Mr. Bell: So it is your position that Dr. E--well, do not let me put words in your mouth. Do you believe Dr. E endorsed Mr. D's opinion?

Mrs. Catton: Yes.

Mr. Bell: Those are all the questions I have of Dr. Hill and his associates. Members may have questions of them before we ask the board to address you.

Mr. Callahan: I would like to straighten out something in my own mind. My recollection is that the workers' compensation legislation was brought in with a view to eliminating the civil right of a person to sue a fellow employee or an employer. I am not that familiar with the act itself, but if that is its purpose, how does the board then move the policy to something different from the normal standard of proof in a civil action? I am referring to the balance of probability.

In my view, it would seem as though the question here should be determined on the basis of this balance of probability. It should be decided on the basis of whether the person with the onus of proof had proved it was more probable that death occurred from the disease caused by the industrial components than any other cause.

I want to know first of all whether that is the standard or whether the board relaxes that standard, as I seem to gather. Does it get into the question of reasonable doubt--that would be mixing two items of proof--and say, "We will give him the benefit of the doubt"? If that is the case, it makes it much easier, in my view, to decide this case with respect to the complainant. However, if the onus of proof is his, as it would be in a civil trial, I would think at the end of that evidence it would be a nonsuit. That is my humble opinion.

Is that what you are saying, that through administration of the act, the board has lessened the burden that was originally there?

Mr. Emmink: I could respond if you like, Mr. Bell and Mr. Callahan. A worker comes under the workers' compensation umbrella, if you like, by reason of part I of the act, specifically subsection 3(1). Perhaps it would be appropriate if I read that out at this point. Subsection 3(1) says:

"Where in any employment, to which this part applies, personal injury by accident arising out of and in the course of the employment is caused to an employee"--I am emphasizing the word "is" as opposed to "may be" or "could be"--"his employer is liable to provide or pay compensation in the manner and to the extent hereinafter mentioned, except where the injury" and then it goes on and lists a couple of exclusions.

I think the important words there are "is caused."

Mr. Callahan: So it appears to be a higher onus than in a civil action.

Mr. Emmink: It would appear so on the face of the legislation. For some time, the board has adopted a policy of benefit of doubt, which lessens that burden of proof, if you will, and provides basically that when the evidence for and against is approximately equal in weight, the decision will go in favour of the injured worker.

Mr. Bell: Excuse me, Mr. Emmink. We seem to have a peripheral discussion; maybe we can all adjourn until that is over.

Mr. Emmink: The board's policy on benefit of doubt has more or less been included in Bill 101, the act amending the Workers' Compensation Act,--in subsection 3(4), where it says:

"In determining any claim under this act, the decision shall be made in accordance with the real merits and justice of the case and, where it is not practicable to determine an issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favour of the claimant."

What we have is a piece of legislation, the Workers' Compensation Act, which appears to require a substantial burden of proof, which the board in the administration of that section, has watered down somewhat to its benefit of doubt policy. That has now been included in Bill 101. There is formally, in the form of legislation, a burden of proof which is much less under Bill 101 than it had been under the Workers' Compensation Act.

Mr. Callahan: Actually, Bill 101 even goes farther than the board's policy; it creates an equitable jurisdiction. It is almost like a small claims court, where you can decide issues on the basis of equity as opposed to law.

Mr. Emmink: I cannot comment on that.

Mr. Callahan: Forgive my ignorance, but is Bill 101 currently in force? Has it been passed?

Mr. Emmink: Part of it has.

Mr. Callahan: Is section you just read in force?

Mr. Warrington: It has been in force since April 1.

Mr. Callahan: Of 1985?

Mr. Warrington: That is correct.

Mr. Callahan: So it was not in force at the time of the appeal hearing here.

Mr. Warrington: No; it started in April 1985. The remaining sections, which incorporate the new appeals tribunal, corporate board and ancillary matters, will take force on October 1.

Mr. Callahan: I find myself in a real quandary, because if the legislation is clearly there and the board itself adopts a different policy, what are we acting under? I do not want to muddy the waters.

Mr. Pierce: They are muddy now.

Mr. Bell: However, what Dr. Hill is saying, and he can refer you to specifics or otherwise, is simply that the board has not required scientific medical proof as a precondition to entitlement to compensation in numerous cases, and that it is not appropriate or, in his words, reasonable for it to do so here.

Speaking for myself, though, it is difficult to deal with this case without a better handle on the standard the board usually applies, in general terms.

Ms. Bohnen: Might I just throw something into this? In the context of the general discussion of the standard the board applies, you have to bear in mind the results of presumptions set out in subsection 3(2) of the Workers' Compensation Act, which states, "Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment."

3 p.m.

Mr. Callahan: That is res ipsa loquitur.

Mr. Bell: Yes, but that is a catch 22 in this case.

Ms. Bohnen: You cannot just take the words "caused by" in workers' compensation legislation without also applying presumption sections and other gloss into the act. It is not my understanding that Bill 101 altered the standard of proof which the board has been applying under the Workers' Compensation Act.

Mr. Sheppard: I think Dr. Hill said there were more than 200,000 chemicals in the United States. I want to ask him what relation that has to this particular case. How many cases in Ontario are chemicals?

Mrs. Catton: I do not know. The only point of that statistic is to show you the number of chemicals and to point out the problem in defining standards for all those chemicals. To suggest that anybody could possibly have standards that would show the combined effect of each one of those chemicals on another chemical is impossible and to have standards for those kinds of things would be impossible to meet.

Our position is simply that to suggest that when you hold that a worker cannot be compensated unless there are standards and he can show his exposure has exceeded those standards, you are placing an unreasonable burden of proof on him which could not be met in a great number of cases, even though the medical evidence available suggests a relationship. This is unfair.

Mr. Sheppard: You are talking about the United States and you have to explain something to me here. I do not see why you are saying there are 200,000 chemicals in the United States. What I want to know is how many chemicals there are in Ontario?

Mrs. Catton: I do not know. That statistic we have is the American statistic. I am sorry, I do not have that statistic with me.

Mr. Hayes: Just a supplement to that, I think your information comes from--what do they call it?--the American Conference of Governmental Industrial Hygienists?

Mrs. Catton: It is the occupational safety and health branch of the federal government.

Mr. Hayes: I understand that the Ontario government bases its standards on that. So the guideline really comes from the Americans.

Mrs. Catton: In a great number of cases, that is right.

Mr. Hayes: I think you just touched on it there, and it is still along the same lines.

Dealing with the various chemicals, and it looks like there could be half a dozen different chemicals here, am I correct in saying that when they set the standards or the special limit values, they do not really take into account the effects that occur when various chemicals get mixed in the atmosphere?

Mrs. Catton: They can in some cases.

Mr. Hayes: In some cases.

Mrs. Catton: But they do not with all the chemicals. What we do know is that both kinds of alcohol, ethyl and methyl, can aggravate the potential effects of other chemicals, such as butyl cellusolve, but we do not have standards for those. We do not have accepted standards of all three combined; so we do not know what is an acceptable level.

Mr. Baetz: I think part of my question has been answered. I am dealing with the benefit of doubt and I am looking at a June 19, 1985, letter from the board to Dr. Hill.

Mr. Philip: What page is that?

Mr. Baetz: That is page 47. It is page 48 that I am interested in. The date of the letter is of some interest here. That is June 1985. Presumably, that is after the implementation of Bill 101, is it not? I am looking at that last sentence in that first paragraph, which reads: "As in all cases, benefit of doubt is an administrative matter and is not one of medical prerogative."

You have the views of some doctors taking one position and the views of other doctors and other experts taking another position. Is it then a question, if it is an administrative matter, of first of all determining that we now have a situation in which there is some doubt? That is an administrative matter, is it? Having decided you are now dealing with a matter of doubt, according to this, it is then clearly an administrative matter whether you go this way or that way.

Mr. Emmink: I can respond to that, if you like. I think the comment about its being an administrative matter referred to the fact that the suggestion that the board apply the benefit of doubt was contained in a medical report. When we talk about benefit of doubt being an administrative matter, we mean it is a doctrine that is taken into account in the adjudicative process as opposed to the medical consulting process.

What we have was a suggestion from a doctor whose normal routine, as I understand it, is to provide a medical opinion on the basis of his findings and, on the other hand, we have the doctrine of benefit of doubt, which, as I have said, is an adjudicative function. This is why we have distinguished it in that way. We were merely drawing a distinction between benefit of doubt as it is applied in an adjudicative capacity and the fact that the doctor was using that, whereas he may not have understood it in the same way the board would apply it.

Does that clarify it any for you?

Mr. Baetz: Somewhat. I do not know. It suggests that it is a very complicated process.

Mr. Emmink: For example, when the board applies benefit of doubt, it does so by weighing the evidence for and against. When it is approximately equal in weight, we will say it should go in favour of the worker.

The doctor may not have had that same concept in mind when he applied benefit of doubt. We do not know; maybe he did and maybe he did not. He might have said, "Where there is just a shadow of a possibility, apply the benefit of doubt." On the other hand, he might have thought: "It is so obvious, but it is not certain. Therefore, apply the benefit of doubt." We were not sure exactly how he meant that.

Mr. Baetz: Then it is an administrative matter to determine whether it is a matter of doubt or not.

Mr. Emmink: It is administrative as opposed to medical consulting.

Mr. Baetz: So the decision in this case, being against the complainant, was an administrative decision.

Mr. Emmink: That is correct.

Mr. Chairman: Are you finished?

Mr. Baetz: Yes, for the moment.

Mr. Henderson: I have a question. Can someone try to translate this comment into legal terms for me? On this matter of standard of proof and benefit of doubt, it seems to me another relevant point is that the condition--in this instance, of postnecrotic cirrhosis--is one that requires to be explained in etiological terms as opposed to, say, skin rashes, gastritis, arthritis, high blood pressure or something that a claimant might argue and that would require a very rigorous standard of proof because of the common frequency of the condition and the fact that they often go along with being in one's 40s or 50s.

Postnecrotic cirrhosis is not like that. If evidence of it is found, there is very likely a cause. If the evidence were 80 per cent equivocal and 20 per cent in favour of a particular cause, in a medical sense the benefit of doubt, if you like, would fall on the 20 per cent, whereas if it were arthritis and the same situation applied, in medical terms the benefit of doubt would tend not to fall in the 20 per cent; it would tend to fall in the realm of, "We do not know," or, "It is not satisfactorily explained."

3:10 p.m.

I make that comment because it seems relevant. If there is a question in it, it is to any of the lawyers present or somebody like Mr. Callahan to tell me how that works into some of the concepts you have been talking about this afternoon. I will leave it as a question at large, if you wish.

Ms. Bohnen: Can I say something to that? I think the Ombudsman's case rests partly on that, and none of the other known causes of this man's hepatitis was present. He did not drink. He had no evidence of any kind of viral hepatitis. It came down to toxic exposure from employment or we do not know.

Mr. Callahan: Is the fact that he did not drink accepted by the Workers' Compensation Board?

Mr. Emmink: It is not. He did.

Mr. Callahan: That is very critical.

Ms. Bohnen: I am sorry. Implicit in my saying he did not drink was that he did not drink excessively. There is medical evidence that he drank in moderate amounts.

Mr. Callahan: Is that accepted by the board?

Mr. Emmink: That is that he drank

Mr. Poirier: (Inaudible)

Mr. Henderson: Postnecrotic cirrhosis is not the kind of cirrhosis that usually follows on drinking anyway. That is a different kind of cirrhosis.

Mr. Warrington: Is it not lifestyle, sir?

Mr. Henderson: If this is important, somebody should ask a pathologist, but as I understand it, postnecrotic cirrhosis is a different kind of cirrhosis from the kind that follows on excessive drinking.

Mr. Emmink: Mr. Bell, for the committee's edification, we have Dr. McCracken with us today. Dr. McCracken is prepared to dialogue with the committee on some of the background of this condition. It may help for the committee members to know just what the background of this disease is.

Mr. Bell: To be consistent with the committee's decisions in the past, if Dr. McCracken can assist the committee in expanding upon the board's position or any medical opinion that the board relies upon in support of that position, then his comments would be most welcome. I think the area we would like to avoid is that of Dr. McCracken coming in to give fresh medical--

Mr. Emmink: No, absolutely not. It is more by way of an explanation of what postnecrotic hepatitis is and how it fits into the circumstances of this case, but I am in your hands.

Mr. Bell: Can we wrestle some more with the scientific/medical proof required? Mr. Emmink, I think we understand now what it is you require. I, for one, am having difficulty in understanding why the board believes the evidence the Ombudsman relies upon does not come up to that standard. Could you explain that in more detail and could you give us--I guess in hypothetical terms--the type of evidence you would have accepted as establishing a causal relationship?

Mr. Emmink: Yes, I can do that. I suppose one of the easiest ways of doing it, and maybe the shortest way, is simply to ask the Ombudsman to identify which chemical is hepatotoxic. Which of the chemicals to which he was exposed is hepatotoxic and what is his authority for saying that particular chemical is hepatotoxic? That in essence is the burden of proof the board would require.

Mr. Bell: Well, I'll bite.

Mr. Callahan: Maybe an answer to the question is at the bottom of page 39. I do not know whether this is a misprint or not, but it says: "In the appeal board's opinion, the combined weight of the medical opinions from Drs. C, F, J and K, all of which are equivocal in their failure to find a causal relationship, by far exceeds the more speculative and qualified opinions from Drs. B, E and J and the report from Mr. D."

Mr. Emmink: That should be "unequivocal."

Mr. Callahan: That should be "unequivocal." That is what I thought. I guess that is what they are saying. They had accepted one set of experts over the other experts. That is why I am in a quandary as to what the burden of proof is here. I think it is essential. If it is the balance of probabilities, as in a civil trial, that is probably a fair decision by the appeal board. If they apply the question of reasonable doubt, then one would think you would have to determine just how far does it exceed the other evidence. If at the end of the matter it becomes a matter of equal balance, or something close to equal balance, one would think the reasonable doubt would be exercised in favour of the complainant.

Mr. Hayes: The consultant for the occupational health and safety branch of the Ministry of Labour suggested that the employees wear protective equipment, including respirators, impervious gloves and so on. I do not know any of these people who would do these things just for the sake of doing it. Can you tell me why they recommended this protective equipment if there was nothing toxic there?

Mr. Emmink: There is a difference between something that is toxic and something that is hepatotoxic. What we have in this case is a man with liver disease. If we are to conclude that the liver disease was caused by his exposure to certain elements at work, then we must be able to show that certain of those elements were hepatotoxic.

That is not to say he could not have been exposed to elements that were toxic in some other fashion. I do not think anyone will argue that it is going to do you any good to drink kerosene or to breathe kerosene fumes. But whether or not that will have an adverse effect on one's liver is something entirely different. I think the Ministry of Labour officials, when they suggest that workers wear a mask, were doing so simply because it makes good sense to wear a mask so that you do not breathe in kerosene spray, but not because kerosene spray is hepatotoxic.

Ms. Bohnen: Can I just try to answer the question that Mr. Emmink asked? He asked us to identify an agent contained one of the chemicals.

Mr. Bell: You are not going to ask another question, are you?

Ms. Bohnen: No, I am going to answer the question, or try. I think the answer is, to quote from one of the medical reports: "The aromatic components of Stoddard's solvent or kerosene could be hepatotoxic, but," and this is more important,

"butyl cellusolve in the dyes he was using will, if absorbed through the skin, exert a hepatotoxic effect." There is no question that the dye contained butyl cellusolve.

Mr. Chairman: Are you finished, Mr. Emmink?

Mr. Emmink: No.

Mr. Bell: Forgive me. May I ask one more question? You have not answered my question. What is the type of medical/scientific data that you would accept? Probably if there were recognized literature and studies of so many people, so many years, so many effects, some conclusions on a scientific medical basis, that is one of the areas of evidence you would accept.

Mr. Emmink: If, for instance, it were a designated substance under the Occupational Health and Safety Act, such as lead, we would have no problem with it.

Mr. Bell: No. Let us talk about the solvents we do know were present in this work place. If they were acknowledged and accepted in medical literature on the subject saying causal effect, would that be a body of evidence you would accept?

Mr. Emmink: It would certainly help. It would depend on who the body was.

Mr. Bell: I use the word "acceptable." If a known, leading Canadian pathologist, whose opinions the board has accepted on other issues in the past, came to you and said, "In my opinion, based on the following, there is a causal effect," is that another area of medical/scientific data you would accept?

Mr. Emmink: We certainly would find it persuasive.

3:20 p.m.

Mr. Bell: If a number of pathologists, whether they were leading or otherwise--I do not want to use that; it is like a meat chart--if 10 pathologists were lined up and all of them said, "In our opinion, there is a causal effect," is that an area of evidence you would accept?

Mr. Emmink: Any area of evidence that is generally accepted in the medical community is one the board would accept.

Mr. Bell: Mr. Alexander uses the phrase "conclusive medical/scientific data." I am trying to get a handle on that, because we are struggling with things like standards and burdens. What evidence do you say fits that description? We have looked at three types. I have heard you on two. I am not sure I have heard you on the third, about the 10 pathologists lined up. What does it take to get into the conclusive medical/scientific data club?

Mr. Emmink: To the extent that any cause and effect relationship can be conclusive in the whole field of industrial diseases, if that opinion as to cause and effect relationship were one that was shared generally by the medical community, the board would be guided by it.

We would in all likelihood develop guidelines that would more or less encompass that view, as we have done with many of the cancers; for example, the nickel aerosols leading to cancer, and asbestos leading to cancer. Industrial hearing loss is another one. In this case, there is not that kind of evidence out there to enable the board to come to such a conclusion.

Mr. Bell: Is the board aware of any evidence that some or all, or a combination of the chemicals described in the materials, given their known use, may cause the type of condition this person suffered from?

Mr. Emmink: There is evidence, yes, in the form of the medical reports on which the Ombudsman relies.

Mr. Bell: No; aside from that.

Mr. Emmink: If you are talking about published evidence in medical journals and in the regulations of other health authorities in other jurisdictions, then I would have to say, no, although I stand to be corrected by Dr. McCracken, who has more information about that than I do.

Mr. Bell: We can conclude one of two things from the absence of that evidence. Either there is no causal relationship that anybody can find and report upon or there has not been scientific study of any significance or amount that would bring us to the stage where results and testing procedures have been reported.

Mr. Emmink: Yes.

Mr. Henderson: I think the term "conclusive medical/scientific data" is very questionable. Data are not conclusive. Data are just data. It is only when a person interprets the data and draws a conclusion from them that his opinion becomes "conclusive." I do not understand the term "conclusive data."

I also wonder if the question "Which toxin?" is a fair test. By analogy, if somebody had an illness--we can stay with liver illness, if you like--it might be possible to say, "This is a viral illness." If somebody were to ask, "Which virus?" you would have to say: "I do not know. There are several of them around. The evidence is that it is viral, and therefore we are going to make a diagnosis of a viral illness."

Similarly, there were many toxins around in the work place. There is no evidence that there were any toxins in this man's life other than in the work place, apart from a little bit of social drinking, I gather, which causes a kind of cirrhosis but not, as far as I know, the kind of cirrhosis this man had. There were toxins around in his work place, but I do not know if it is crucial, at least in my mind, that we know exactly which toxin.

I would like to hear from Dr. McCracken, because he may be more up on this than I am. I have the impression from my training in pathology and medicine that some of these compounds are or

could be hepatotoxic, and there may be some evidence to that effect.

Mr. Emmink: Some of them are, undoubtedly, if they are ingested.

Mr. Henderson: Or inhaled.

Mr. Emmink: Alcohol, for instance, is hepatotoxic if it is ingested. It is not hepatotoxic if the aromas are inhaled.

Interjection.

Mr. Emmink: I stand to be corrected by Dr. McCracken.

Mr. Bell: Dr. McCracken, one question we are interested in is whether any or all of these chemicals are potentially hepatotoxic if they are somehow absorbed into the body's system by inhaling, absorption or maybe old-fashioned drinking.

Dr. McCracken: It is a complex problem. Without getting to the analysis I carried out, and to respond directly to your question, we know that several of the solvents identified--one was ethyl alcohol; the other was methyl alcohol--if they are swallowed in excess and/or for prolonged periods, can cause damage to the body. With methyl alcohol, the damage tends to be primarily to the nervous system, causing people who drink it to go blind.

Many of the other chemicals also have a primary effect on organs other than the liver; again, it is brain, bone marrow and pitting. It is well documented that people who get into trouble with ethanol, which is the same as grain alcohol in liquor, drink excessively, usually over prolonged periods. It is often associated with relative malnutrition, because they are drinking when they should be eating.

Damage occurs to the liver cells, leading to death of the liver cells, or necrosis, then scarring, cirrhosis and, in a certain percentage of these people, a hepatoma, which is a cancer of the liver such as developed in the man we are talking about today .

I should stress that it has to be in perspective; i.e., the necessary prolongation of exposure plus the intensity of exposure. I am sure the two board physicians who looked at this case presumably identified these two chemicals as having the potential of being hepatotoxic and concluded that the duration and intensity of exposure were such that it is not generally considered to be a causal effect.

The medical community has had considerable exposure to this problem, because cirrhosis of the liver is the fourth most common cause of death in the 30 to 55 age group in the western hemisphere today. There has been a tremendous number of studies carried out, and the conclusions have shown consistently that the most common cause of this condition is excessive, prolonged consumption of alcohol.

The second most common cause is cryptogenic, which has been referred to here as "no known etiology." Some people believe it is an autoimmune response to the body in some individuals similar to acquired immune deficiency syndrome, only a different cellular mechanism, whereby the body turns upon its own cells and destroys the liver cells in this case.

Chemicals are identified as a significant cause, and I am not sure whether it is third on the list but it is certainly close to it. Those chemicals include such things as certain anaesthetic agents used in medicine and from there right down to the very common things such as headache pills. The chemical in many of our headache compounds indeed has been identified as being hepatotoxic. It has been identified as a cause if an individual were to take headache pills over a prolonged period of time in a large enough number.

I can only conclude that the two board physicians qualified in the field of industrial medicine have looked at their sources of information, such as the National Institute for Occupational Safety and Health in the United States, which developed an up-to-date, ongoing list of toxic chemicals or chemicals that might have a toxic effect. That is one of the prime reference sources, no question about it.

From what I can gather on reviewing the file, they both concluded that the chemicals involved and the intensity and duration of exposure were such that they were not able to arrive at a cause and effect. I do not know whether that answers your question.

3:30 p.m.

Mr. Philip: Would you agree that the first cause you mentioned, namely, alcoholism, was not evident in this particular case, as the board has admitted that?

Dr. McCracken: In reviewing the file, I believe there was one reference in one of the reports indicating that the worker was classed as a social drinker or an occasional drinker. As you can appreciate, it is notoriously difficult to be certain relative to many of the lifestyle diseases, especially in alcoholics. It is well known that alcoholics tend to hide bottles in cupboards and various places and often keep their lifestyle problem quite a secret. However, on the basis of the one bit of information I saw, it was presumably considered that this man was not a heavy drinker.

Mr. Philip: May I ask the Ombudsman's office about that? Is there no evidence that this man was a heavy drinker?

Mrs. Catton: There is absolutely no evidence. As a matter of fact, Dr. B, who did a liver biopsy clearly, states that there is no evidence of alcohol degeneration as a result of looking at that biopsy. There is absolutely no evidence in the file that he had an alcohol problem or that alcohol was any part of the cause of his disease. There is a reference to the fact that he had one glass of wine per week, but to suggest it had any affect on his hepatitis, it just does not appear from the file.

Mr. Philip: Even Mel Swart has more than one glass of wine a week.

Dr. McCracken: I do not think, on the evidence of a microscopic examination, it is possible to determine the causal agent of impending cirrhosis or necrosis of the liver cells. Anderson's Pathology, which is one of the great authorities, is unable to make that distinction.

Mr. Philip: At the same time, would you not agree that we should not fantasize about the possibility of alcoholism if, first, we have evidence that he had one glass of wine, and second, there is no evidence in the autopsy that there was anything in his death directly related to alcoholism?

I wonder if you would comment on Dr. Henderson's contention that from his experience and knowledge as a medical practitioner, the kind of disease that killed this person is not the same kind of cirrhosis or cancer that is caused by alcoholism in the first place? Is that your reading of the literature?

Dr. McCracken: No, it is not. As I say, Anderson's Pathology is unable to make the distinction. They describe the gradations leading up to the possible end pathology. The first one, of course, is acute hepatitis. We have no history that I am aware of that this man had any episode of acute hepatitis.

The second phase is necrotizing hepatitis. This necrotizing or death of cells can occur in various parts of the cellular elements that make up the liver. In turn, that leads to scarring similar to death of cells anywhere else, and the scarring in turn leads to the development of cirrhosis.

A relatively small percentage of people who develop cirrhosis will in the final stages go on to develop a primary cancer of the liver known as a hepatoma. I understand from the autopsy report that this is what this worker had.

Mr. Philip: When did he first come in contact with these chemicals?

Mrs. Catton: In 1972.

Mr. Philip: And the time of death was 1982?

Mrs. Catton: In 1984.

Mr. Philip: Would it not be your experience, if there were causes such as you hypothesize might be present, that it would be caught by medical examination earlier than that? In other words, you do not die of alcoholism--if I may use that generalization; I am not a medical practitioner--overnight; it is a long process, is it not? Very few people die in 14 years from alcoholism. It is something that develops over a period of years and years.

Dr. McCracken: One has to generalize, because each year a number of people do die very quickly because of acute

alcoholism. In other words, they die of acute poisoning. Another group of people die--

Mr. Philip: These are all long-term drinkers?

Dr. McCracken: Not necessarily. A case was cited some years back of a person, obviously not a chronic drinker or chronic alcoholic, who got into a wager that he could drink 26 ounces or 40 ounces of liquor without stopping--

Mr. Philip: But there is no evidence of that kind of thing happening here. Sure, we can come up with eccentric, freak accidents and things like that, but there is no evidence of anything like that in this man's history.

Dr. McCracken: As I say, from the review of the file, this man had no episode of acute hepatitis.

Mr. Philip: If you were a coroner examining this man and trying to come up with a cause of death, would you not say there was only one factor--the chemicals he was using--that seemed to be indicated by anything studied on this man? There is no history of alcoholism, no history of his having had a virus of any kind and no history of any excessive use of any kinds of prescription or nonprescription drugs. The only variable seems to be these chemicals he was coming in contact with, which may have been ingested through his skin.

Would that not be your conclusion if you were a coroner trying to come up with the possible cause of death?

Dr. McCracken: No. If I were a coroner, I am afraid I would tend to agree with the finding of the pathologist who did the autopsy. His finding was that he could not account for the cause of cirrhosis of the liver.

Mr. Philip: May I ask Mrs. Catton to respond to that?

Mrs. Catton: We specifically asked the doctor who treated him and performed an autopsy. His response was that the autopsy does not give us any clues to the etiology of his cirrhosis. This does not give him any answers. We asked him specifically on the basis of his examination. We did not provide him with the complete history of the complaint that we knew.

Mr. Philip: So that is purely on an examination of the cadaver, but not on an examination of the lifestyle and history of the person when he was alive?

Dr. McCracken: The pathologist has full access to the hospital and medical documents and reviews the history before the autopsy is carried out. If the pathologist is too rushed, he or she finishes it when the autopsy is completed. That forms part of the basis for his or her deliberations.

Mrs. Catton: The complainant died of liver failure, and that was the purpose of the autopsy.

Mr. Philip: It was to identify why he died, not to identify the reasons that led to the death?

3:40 p.m.

Mrs. Catton: That is right.

Mr. Henderson: You have made the point that Anderson's Pathology does not allow for, I presume, a microscopic distinction between postnecrotic cirrhosis and alcoholic cirrhosis.

Dr. McCracken: Yes, that is right. Anderson does not attempt to distinguish.

Mr. Henderson: But the diagnosis of postnecrotic cirrhosis was made; so the pathologist who made the diagnosis presumably did not agree with that. He presumably felt he could tell from the microscopic. I presume he did not make that diagnosis from the gross; he made it from the microscopic. But he felt he could say it was postnecrotic cirrhosis, I gather.

Ms. Bohnen: The pathologist said exactly this: "The liver biopsy was done after normal coagulogram, and this showed evidence of postnecrotic cirrhosis with changes of chronic nonspecific hepatitis. There was no evidence of alcohol degeneration."

Mr. Henderson: It has been a while since I have looked at Anderson's, but in working up this material, do pathologists not distinguish between postnecrotic cirrhosis and alcoholic cirrhosis and alcoholic degeneration? I am sure they did when I went to medical school.

Dr. McCracken: I can only presume that what is being alluded to in the report of the liver biopsy, the punch biopsy that was done, is that the pathologist did not identify fatty degeneration in the liver cells. I am making that presumption.

What Anderson speaks about in his textbook on pathology is that if there is a toxin that is a hepatotoxic vehicle, and specifically ethanol, the first changes seen microscopically and in the gross, looking at the liver, if one were to operate on the person, are fatty changes.

Then he goes on and describes a transition at a certain stage whereby the fat starts to break up and, as a result of the breakup, a certain number of the cells die and you get necrotic hepatitis or chronic hepatitis. Then he describes the (inaudible) changes, which are scarring as a result of the cell death and then, flowing from that, the development of the final stage of a cirrhotic liver.

Mr. Henderson: Is there a difference between the necrotic hepatitis and chronic hepatitis, necrotic cirrhosis and chronic cirrhosis? Those are two different--

Dr. McCracken: Chronic hepatitis and cirrhosis?

Mr. Henderson: No, between necrotic and chronic. Those are two quite different microscopic pictures, are they not?

Dr. McCracken: I believe that Boyd's textbook of pathology had originally described periolobular necrosis versus necrosis occurring around the central canal. It is my understanding that in Anderson's textbook, which is one of the authorities that is generally accepted, most pathologists have reached the point where they are unable to make any distinguishing microscopic evaluations. In other words, they now feel that this is part of the evolution of cell destruction that we have been looking at and, depending upon when you look at it, what you see under the microscope.

Mr. Pierce: Maybe for my benefit and a point of clarification, somebody can respond to these questions. The claimant was born in 1932 and started employment with this particular company in 1972. Is there any record of what his previous employment was? Was he subject to any other types of chemicals that would have had an effect on his liver previously?

Mrs. Catton: He worked in a Communist country for about 10 years on a state farm doing general labour and he also worked in a wicker factory for about 10 years. There is no evidence that he was exposed to any chemicals in the 20 years prior to starting this job.

Mr. Pierce: I understood the word "wicker". I am as familiar with that as I am with the word "liquor."

Is it not true, medically, that the effects of some chemicals on some peoples' bodies are different to those on others and that they can differ? Some chemicals can do different things to people's bodies from what other chemicals can, etc. Is that not an accepted medical position?

Dr. McCracken: That is a very valid observation. In almost anything, as it relates to an individual's exposure to his environment--what you breathe, eat and drink--each person has some individual characteristics. There are some people who are deemed particularly sensitive.

Mr. Pierce: In other words, some people can smoke until they are 95 years old and never have cancer, while other people will die at 21 after smoking for five years.

Dr. McCracken: Yes.

Mr. Pierce: During the seven years of this last claimant's employment, was there ever any history of complaining to the employer about nausea or headaches related to the chemicals with which he was involved? Seven years later, did he suddenly get a nosebleed and quit?

The way I read the material provided to us, there is no history in the seven years of employment to show this employee was bothered by his work area, but it also states that "he habitually

worked long hours and weekends" as well. Was he reporting to his employer that conditions were not right, that he should not be there, or that something was happening within his body over which he had no control? Was he maybe eating aspirins and not telling anybody? What is the history of the guy? For seven years, it does not tell us a thing about him.

Mrs. Catton: The best I can figure out from the evidence here is that about a year before he was laid off he started to get nosebleeds. He went to see the doctor and they started to diagnose the problem at that time.

The only other evidence is that when he was talking to Dr. E at the occupational clinic, he said prior to this that he had felt a heaviness and burning in his nose and eyes, but he did not report that to anybody.

Mr. Philip: I do not want to stereotype the man, but judging from his application or letter to the Ombudsman--I assume it his letter on page 9--

Mrs. Catton: That is right.

Mr. Philip: --would you not characterize this man as someone who probably would be fairly inept as far as English is concerned, probably not one to take on an authority? The very way in which he almost pleads with you to do it and invokes God's blessing on you at the end, would suggest he is hardly the kind of person who is going to go around complaining to the boss and making waves.

Mrs. Catton: I do not want to make any judgements on his personality, but you have to recognize that this was his first and only real job in Canada. He was a recent immigrant. I think the observations are not offbase.

Mr. Baetz: In attempting to look at the cause from a medical point of view, to what extent would you take into account the fact this man was the only employee in the whole history of the company who ever had this kind of sustained, intensive exposure to the blue dye, the kerosene, etc? I gather the organization changed when he left the job, but he was the only one who was exposed intensively for seven years to these various agents. As you weigh the evidence and look for causes here, is that a factor? Do you give it any kind of weight at all?

3:50 p.m.

Dr. McCracken: I can only comment on that by suggesting that is one of the factors that is routinely taken into consideration by the industrial disease consultants at the board. This is considered to be one of the things they must always look into. Have there been previous cases occurring under these circumstances in that particular industry or doing that particular thing? If we use the argument that the basis of exposure was, at least in part, due to the volatility of some of the chemicals and, in part, due to skin contact--we presume he did not drink any of

the chemicals--that is a presumption. I am sure they made that presumption in evaluating the case.

The conclusion they would come to is that--and it is common if you are dealing with a volatile substance--workers who are working around that area would have a significant exposure as well. Therefore, the fact that he was the only person could probably be interpreted by the industrial disease consultants as indicating there was not something going on in the work place which was giving rise to liver damage type of conditions.

Mr. Baetz: Yes, but in this particular case, if I understood Dr. Hill's report correctly, he was the only employee ever to have gone through seven intensive years of this kind of consistent exposure. There were no other employees. In other words, this time you really did not have a control group. You can use that expression here; you did not have a control group to compare. If there were 25 employees who had all been exposed to the same degree as he had, and he was the only one who ended up with cirrhosis, the medical experts might say, "That really proves, or it gives a lot of reason to believe, it was not work-place conditions that caused his problem."

Dr. McCracken: Mr. Baetz, I can only read from the file. I had not appreciated that he maintained a unique position in the company as being the only person exposed--

Mr. Callahan: He probably did.

Dr. McCracken: Possibly Mr. Emmink can comment on that.

Mr. Emmink: Yes. You have referred to seven years of intensive exposure. The other thing I wanted to add was that the evidence presented to the board at the hearing was that he was exposed from two to 10 minutes in one place and in another place from 20 to 30 minutes at the beginning and at the end of each shift.

Mr. Baetz: At the beginning and at the end of each shift.

Mr. Emmink: Right. So there would be a maximum, using those figures, of one hour per day.

Mr. Baetz: For seven years.

Mr. Emmink: Yes. I thought you were under the impression he was exposed to it eight hours per day for seven years.

Mr. Baetz: No. I realize he was not, but he was the only one. This is the thing that--

Mr. Philip: My I ask a supplementary? Would you turn to page 32? That may assist you. You may want to ask the question. I can ask it. On the bottom of page 32, it seems there is some information which suggests, at least from one medical practitioner, that it was significant.

Mr. Baetz: Why do you not carry on then.

Mr. Philip: I am sorry. It looks as though the doctor mistook what he was working for. I withdraw the question. Every one of us is allowed one red herring per day. It gives us the necessary protein we need.

Mr. Poirier: The process with which the complainant had worked was unique to the time he worked with it. Is that what I can gather?

Mr. Emmink: I understand so.

Mr. Poirier: And that blue dye was not used by anybody else before him.

Mrs. Catton: No. Other people used blue dye, but not on a regular basis, and they continue to use the blue dye.

Mr. Poirier: Not in the way he used it.

Mrs. Catton: That is right. It is not just one person taking care of all of the moulds; each tool and die maker is now responsible for sanding and dyeing his own moulds.

Mr. Baetz: It was not until the seventh year, or sixth year, that he began to complain.

Mrs. Catton: That is right. I am not even sure he complained to the company, but he complained to his doctor because of problems.

Mr. Callahan: Let us say the man was literally bathed in kerosene all day for seven years. Surely he does not have to drink the kerosene to get it into his body; it would be absorbed through his skin and still get into his system. Would that not be right?

Dr. McCracken: Yes. In a situation such as that, the effect would not be primarily to his liver, but he would be in very grave trouble with an acute kidney disease, nephritis or nephrosis. Early on, you get brain changes, i.e., stupor, staggering, falling down, loss of memory, that sort of thing.

Mr. Callahan: In fact, there are documented cases of farmers being in silos and having their blood alcohol raised in excess of the legal limit through inhalation of the alcohol.

Dr. McCracken: The only situation I am aware of in connection with farmers in silos is the toxicity of nitrous oxide as a result of fermentation going on. I was not aware they were operating stills. I had not appreciated there was a high alcohol level.

Mr. Callahan: I used it as a defence once and it worked.

Dr. McCracken: Usually the effect on farmers is due to fermentation leading to oxides of nitrogen.

Mr. Callahan: Page 4 of the initial report says: "In later years the company supplied these items," namely, paper mask, leather apron and cloth gloves. "He stated that he used and was exposed to kerosene throughout the day and was constantly inhaling the fumes as his paper mask and clothing were soaked with kerosene." That is not a healthy environment.

Dr. McCracken: I found that observation rather intriguing myself. I do not think any of us could tolerate wearing a mask soaked in kerosene. The commonest cause of a mask becoming saturated is condensation of exhaled breath. One of the problems of wearing masks is that the filter does become wet, but it becomes wet due to the condensation of the moisture coming from the lungs. I suspect that was what it was.

There might have been a superimposed smell of kerosene, but I do not visualize that the mask would be soaked with kerosene. I think that was an error in observation, if you will.

Mr. Callahan: He used to blow the kerosene off the machines and apparently that is how his clothes got soaked. Is there alcohol in kerosene?

Dr. McCracken: No.

Mr. Callahan: None at all?

Dr. McCracken: Unless it is a contaminant, but I would not visualize that there would be any contamination because--

Mr. Callahan: What burns kerosene?

Dr. McCracken: Kerosene is a distillate product from crude oil production, one of the fractionated compounds coming from the distillation of crude oil, as they break it down to gasoline. Kerosene is one of the byproducts, as opposed to alcohol, which, if not derived from fermentation, in certain processes occurs due to certain chemical reactions.

Mr. Callahan: Methyl hydrate obviously is an alcohol.

Dr. McCracken: Yes.

Mr. Callahan: In the circumstances we have just described, if he was exposed to methyl hydrate on a daily basis, could that result in his getting cirrhosis of the liver?

Dr. McCracken: Again, if the concentrations were sufficient to be toxic, methyl hydrate has been identified as attacking primarily the nervous system and, secondarily, the kidney system.

Mr. Callahan: Would it also attack the liver?

Dr. McCracken: I am not aware of any cases of cirrhosis that have been identified with methyl hydrate. The usual situation is that a person drinks rubbing alcohol and ends up by losing his

sight because methyl alcohol is selective to the brain and, secondarily, to the kidneys.

Mr. Callahan: What burns it off? Does not the liver burn off alcohol?

Dr. McCracken: The liver detoxifies methyl hydrate.

Mr. Callahan: That is right; so eventually it goes through the liver.

4 p.m.

Dr. McCracken: Yes, but because it goes through the liver, ipso facto, I am not aware that this automatically leads to cellular death of the liver. In other words, I am not familiar with anyone dying from acute toxic hepatitis from the ingestion of methyl hydrate or the breathing of methyl hydrate, but its effects on the nervous system and kidneys are well documented.

Mr. Callahan: So if I like to drink, I should avoid ethyl alcohol, I guess.

Dr. McCracken: Methyl alcohol. Absolutely.

Mr. Callahan: The final item: Is kerosene or methyl hydrate a hepatotoxin?

Dr. McCracken: As I say, methyl hydrate is methyl alcohol, and it primarily attacks the nervous system. The prime chemical that was identified here by the people looking into this case, the one that has been identified as the hepatotoxin, is the ethyl alcohol, ethanol.

Mr. Callahan: If the man did not drink to excess and these other items would not necessarily attack the liver, what other reasons could he give for having cirrhosis of the liver?

Dr. McCracken: About one third of all people with cirrhosis of the liver drop into the category where the researcher, the clinician, is unable to identify the agent that has caused the cirrhosis of the liver. In other words, it is not a cut and dried situation. If you take a look at the probabilities, if you were to present the cirrhotic liver to me and ask me: "Why did this happen?" I would say the the most common cause is the excessive and prolonged consumption of alcohol.

The second most common cause is the cryptogenic where, in other words, no etiology can be determined.

Many researchers feel there is a cause, and they feel the cause is an unidentified virus or viruses. Tests for viral hepatitis are limited to several strains of virus; so they feel that in all probability this is it.

Over and above that, in certain parts of the world it is quite common for a person to develop cirrhosis of the liver

because of a fungus that is common in the food source. In other parts of the world, another common cause for cirrhosis is the fact that the person becomes infected with parasites. If parasites lodge in a person's liver, they give rise to cirrhosis ultimately.

As I mentioned, there are quite a number of chemicals that have been identified as leading to toxic effects in the liver, one of them being an anaesthetic agent. There are certain tranquillizers that have been identified as leading to cirrhosis; these have been documented, as well as the long and continued use of certain of the painkilling drugs.

Mr. Callahan: I have a document here. I am not sure what it is, but there is a statement made in a background study by the National Institute for Occupational Safety and Health that says: "Criteria for a recommended standard occupational exposure to methyl alcohol, 1976, cases cited of methyl poisoning which resulted in acute hepatitis."

Ms. Bohnen: I would like to apologize to the committee. When this question came up, I shared with Mr. Callahan some notes in which that study he just referred to was stated. The board has seen this. It was notes prepared for--no, sorry, I should not say that; if they have, it is from their file. Notes were prepared for the appeal board hearing by the worker's representative.

Mr. Callahan: Then maybe I could carry on, if that is the case. I asked you whether that type of alcohol would cause liver damage and you indicated it would not.

Dr. McCracken: I have not been aware of any reported series of cases where they related the ingestion of methyl alcohol to the development of acute or necrotic hepatitis. As I say, the usual relationship is brain damage, loss of vision and the effect on the kidneys. However, NIOSH obviously has found a case where it was deemed that methyl alcohol was identified as the causal agent for hepatitis.

Mr. Callahan: Thank you.

Mr. Baetz: I have a quick supplementary. In regard to this paper mask that the man wore, whether he made it himself, whether it was bought, or whatever, you disputed the idea that it was wet because it was saturated with kerosene and (inaudible) it was wet because of the person's own breath, which is probably the case. However, would not the fact that it was wet, for whatever reason, lower its effectiveness as a filter?

Dr. McCracken: From what I understand, the type of protective mask he was wearing would afford him absolutely no protection relative to any fumes from kerosene or alcohol. In other words, that is not the type of mask that gives one any protection; it filters out dust and things like that.

Mr. Baetz: Yes.

Mr. Sheppard: Why then would he wear a mask at all?

Dr. McCracken: A good question; I cannot answer it.

Mrs. Catton: I can answer that. He was involved in the dry grinding process; he was grinding cast iron. He wore the mask while he was grinding to protect himself from the shavings of the cast iron.

Mr. Poirier: Having worked as a safety officer, I know a lot of people think that any mask, including a paper mask, is a good solution for all kinds of problems. But, as you explained, a paper mask would take care of only the physical properties and not the chemical fumes. I have seen a lot of workers under the impression that because they wore a paper mask they were covered for everything; that is just not the case.

Mr. Pierce: I have used a paper mask on many occasions. In fact, we use paper masks exclusively when we are spraying (inaudible) on electrical motors and using it as a cleaner for motors. The doctor states that it has no value for taking away the chemical, but it makes a big difference when you are using it for spraying motors in the air you are breathing.

Dr. McCracken: As you are well aware, Mr. Pierce, the advantage there is that there is small particulate matter in the air when you spray. Such a mask will indeed trap those particles.

Mr. Pierce: I know that while spraying an electrical motor with (inaudible), one could become intoxicated without the mask and the intoxication would not be as great if you wore the mask. There was a chemical reaction there.

Mr. Baetz: That is why nobody wore a mask.

Mr. Pierce: No, that is not true.

I would like to know if anybody ever interviewed any of the other people who work in the plant to find out how big a physical area this guy worked in? Was it a very small, closed-in, six-by-six area, or was it large?

Mr. Callahan: I think it says that some place.

Mr. Pierce: I looked for it and I could not find it.

Mrs. Catton: Dr. Sleeth in the occupational health unit of the Ministry of Labour went there, and he was in a room 90 by 40 by 15.

Mr. Pierce: Where is that?

Mrs. Catton: I do not think it is in the report.

Mr. Pierce: That is why I did not see it. I looked for it. I saw where he had gone to the work place.

Mrs. Catton: Also Mr. D. As I understand it, it was a large tool room, and the spot testing machines were just part of the equipment in the whole room. The room was 90 by 40.

Mr. Pierce: So it was a large area.

Mrs. Catton: Yes. Everybody worked in that room, but they had spot press machines in part of the room.

4:10 p.m.

Mr. Shymko: Doctor, I wonder whether you would support Dr. C's recommendations to change the practice in the work place where that complainant was exposed to some of these problems. I refer to such recommendations as that they should wear protective clothing, eye protection, impervious gloves, approved respirators, etc. Do you support those recommendations? Do they make any sense to you?

Dr. McCracken: I believe those were recommendations of the Ministry of Labour inspectors. I have found over the years that is a fairly common response in the reports of inspectors. When they inspect an area that has come under question, they make recommendations to ensure that the workers are removed as far as possible by various protective mechanisms, such as ventilation, the proper type of mask, wearing rubber gloves and so forth, from dangers in the working environment. It is a prophylactic measure they take, if you will. In other words, they are saying, "Let us do this, and then it will guarantee you are keeping the workers away from the chemicals here as much as possible."

Mr. Shymko: However, if according to your testimony these chemicals are not hazardous to the degree that they would have caused the problem we are discussing, why go through all this charade of wearing protective devices?

Dr. McCracken: I am afraid you would have to ask the official who carried out that inspection and made the recommendations. That was a decision he made. All I can tell you is that they tend to make these recommendations following inspections because they are playing it safe.

Mr. Shymko: Do you think employers accept these additional costs and so on simply because it is a tradition or a habit to make such recommendations, although medically they are not justified?

Dr. McCracken: I am afraid I could not comment on that. I gather they do.

Mr. Shymko: My impression would be that if recommendations are made for safety and protection in a working environment, one would make them not because it is traditional but because they would be warranted by some medical evidence or concern. In my opinion, that would also be supported by the Workers' Compensation Board.

One provides maximum protection even in situations in which there is doubt, and especially if there is doubt in the area of industrial chemicals, where enough research has not been done. With time we may find evidence that these are hazardous chemicals.

One would support such protective devices on medical evidence rather than tradition and habit.

Dr. McCracken: I believe that is the problem for the committee here today. The medical evidence is such that these substances, outside of the ethyl alcohol component, have not been identified as having been demonstrated to be hepatotoxic. Having said that, kerosene is toxic if the exposure to it is in the wrong way; for example, drinking it. Kerosene is poisonous, and in high concentrations you can get a brain effect; for example, staggering. With excessive exposure, you can become unconscious, as with almost any other volatile chemical.

All I am saying is that the one made by the inspector in his report is the type of decision I have seen many times. It is a decision to play safe. In other words: "We have chemicals here. We may not have any concrete evidence but, none the less, let us work on the premise that the exposure should be as low as possible." That goes through the whole industry. For instance, the Atomic Energy Control Board works on the "as low as reasonably achievable" principle.

Mr. Shymko: In other words, you agree that one should maximize any protective devices or procedures that would minimize even what may be apparent as not significantly dangerous to a worker.

Dr. McCracken: Yes.

Mr. Shymko: If we assume there was a hepatotoxic agent in the chemicals used in the work place, and if we agree that agent was minimal and insignificant, could prolonged and excessive exposure highlight the severity or eventual causal effect?

What I refer to is Dr. E's conclusion that the chemicals were not severely hepatotoxic. The explanation he sees is a prolonged exposure to these agents, which caused or may have caused the severity of the problem.

Dr. McCracken: Usually, more than an assumption is required to develop a cause-effect concept. In other words, it is not good enough for a doctor to say, "Some of these chemicals might have caused it." That is such a nebulous assumption that it will not stand critical analysis.

Mr. Shymko: According to your analysis and the evidence you have, were there no hepatotoxic agents present?

Dr. McCracken: No. The review carried out by the two industrial disease consultants at the board--and I reviewed the file that contained their opinions--concluded that a situation did not prevail, as far as they could determine, where liver damage could have occurred; that is, the chemical plus the intensity and duration.

Mr. Shymko: Okay. I want to allude to a fictional situation. Given that protective devices have been instituted

since 1981, if a case appeared before the board in 1985 and the board found out that from 1981 to 1985 protective devices were in place and the worker in this case did not use those devices at all, the board would argue: "We will not provide him any benefits. We have no case here to support, because he did not follow the protective measures that were instituted." The board is thus indirectly saying that is why the man is sick. I just wonder about the relationship of protection.

Mr. Emmink: If you are alluding to serious and wilful misconduct, that is not a bar to compensation where it results in serious disability or death.

Mr. Shymko: You would treat this as misconduct?

Mr. Emmink: I thought that was the type of scenario you were sketching out there.

Mr. Shymko: My hypothetical scenario was that serious damage could be caused if protective measures were not used. If they had been used, this would not have happened, and vice versa, following the same logic, this did happen because these measures did not exist from 1972 to 1979; now they do exist.

Mr. Warrington: Mr. Shymko, if a construction worker who is required to wear safety boots does not wear them and his foot is injured, he is compensated. The same thing applies in this case.

Mr. Shymko: A brick falling on your foot is quite different from this case of toxins; so I would not make that comparison.

Mr. Warrington: I appreciate that.

Dr. Hill: If I may interject, I am being put in a rather awkward position here. If I had known all this medical evidence and this heavy medical discussion were going to take place, which I did not, with all due respect to Dr. McCracken, I would have brought my own specialist with me. I would have brought my own top-notch doctors here to represent us. I have not got that kind of representation, which puts me in a slightly unfair situation.

For example, Dr. McCracken has neglected to mention the butyl cellusolve, which other experts on file say is hepatotoxic. That has not been mentioned at all. I am certain my own specialist would have mentioned many other things as well. I am being placed in a rather awkward position, not being able to defend myself.

Mr. Shymko: On this very point, with all due respect to the Ombudsman, we are placed in an even worse predicament. We are asked to give an opinion when you as the Ombudsman feel you could have defended your case better if you had contacted doctors to argue your case much more effectively and convincingly than it is now being presented before the standing committee. That is a very important point.

Mr. Callahan: With respect, what is happening here is exactly what Mr. Bell said. We do not want additional evidence. We are taking it as of the incident.

4:20 p.m.

Mr. Bell: To try to put the focus on it, Dr. McCracken is welcome before the committee to assist in elaborating upon, explaining or otherwise discussing the matters of the evidence contained within the Ombudsman's reports and the board's responses. I understand your concern, Dr. Hill. I do not think it is one you need to be worried about.

These cases are the most difficult the committee has to deal with. I hate these cases; the courts hate these cases. You are going to have to leave it to the committee and its assistants to be assiduous in culling out anything that may be in the records that perhaps ought not to be. I think, personally, that the discussion has been helpful. It has not changed the fundamental question. What is the burden of conclusive medical/scientific data and should it apply in this particular case?

Mr. Hayes: This supplementary goes back to Mr. Shymko's question dealing with protective equipment or devices. The question was why this industrial hygienist or consultant would make these recommendations. I know from past experience that sometimes they do these things because they feel some of these substances do affect the person and the person has become ill as a result of them. But the industrial hygienists realize the standard is set so high that, by law, they cannot really give a directive to that corporation, for example, to make those corrections; so they will make a suggestion or a recommendation from their findings if they feel the substance is affecting that individual.

Do you experience that same reasoning, Dr. McCracken?

Dr. McCracken: The only basis on which I can respond to that is my observation of having seen quite a large number of reports coming from the inspectors from the Ministry of Labour. My observation has been that they play safe. In other words, they work on the principle of trying to separate the worker from his work environment by protective measures. I have no quarrel with that.

Mr. Hayes: They protect themselves, do they not?

Dr. McCracken: They protect themselves; that is right.

Mr. Hayes: At the same time, though, they would make these recommendations or suggestions because as consultants they feel that particular chemical or substance is bothering the worker. If that consultant or industrial hygienist thought it was not bothering him, he would not bother making these suggestions or making any directives. That is the way I feel about it.

Dr. McCracken: It is difficult for me to comment on that. It is a decision made by the inspector at the time following the inspection. As I say, it has been my observation that they really do like to play it very, very safe.

Mr. Hayes: My other question is dealing with the liver itself. When a person is exposed to a certain chemical or a solvent and it does affect the liver, is it correct that this might not really show until a very large portion of that liver is affected? Is it possible the person might not have any complaints or feel any illness as a result of this, that there might be a large portion that has been exposed to chemicals over a long period of time and a large percentage of the liver has been scarred before it can be diagnosed?

Dr. McCracken: There are two situations. One is the acute toxic effect in which the person gets a large, usually one-shot, dose of a toxic chemical and immediately or within a matter of hours or days starts to show signs of acute hepatitis, in other words, acute death of liver cells.

Then there is the other type, which slowly melds into the chronic, where the toxicity is extended over a long period of time, usually of high and consistent doses. One of the excellent examples of that is the long and continued excessive use of alcohol in drinkers.

Mr. Hayes: The reason I asked that question is that there were many other people asking questions about why this employee never complained to anybody over that six- or seven-year period. He might not have realized his liver was being affected until he got it diagnosed one year before he passed away. That is the reason I asked that question. His liver could have been affected all along and he would not know this was happening until a very large portion of his liver was affected by whatever chemical was there.

Dr. McCracken: Yes, that is part of a normal history of cirrhosis of the liver. There are many alcoholics who never know there is anything wrong until they find they cannot do up their belt buckle any longer because their abdomen has become so large as a result of their diseased liver. That is often the first point they identify.

Mr. Pierce: Everybody is checking his belt.

Mr. Bell: Dr. McCracken, I am glad you came today. I can give up my diet.

Mr. Newman: The body's toleration level varies, though, does it not?

Dr. McCracken: Yes. As I mentioned to Mr. Pierce when he asked that question, each individual has his own tolerance.

Mr. Newman: It may affect me and not the next individual.

Dr. McCracken: That is correct. That is why some people will get lung cancer because they smoke and other people will not.

Mr. Newman: There is no hard and fast rule at all about that, is there? It depends on the physical makeup of the

individual and the way that individual leads his own life, what he consumes and whether he smokes.

Dr. McCracken: The only hard and fast rule is what the general observation is; i.e., if you smoke, it is known that you increase your chances of getting lung cancer, period.

Mr. Philip: I hope Dr. Henderson will put away his cigar.

In 15 seconds, I would like to express a concern which I should have done earlier and which I have done in this committee before. When we have a matter of a legal problem, we have legal counsel able to give what we hope is a balanced, countervailing opinion. However, once again we are in a situation where one side, namely, the Workers' Compensation Board, has a medical consultant who can give new medical information that is not contained in the file, without any opportunity for the other side.

Much as I respect our own medical practitioner, who happens to be sitting in front of us--

Interjection: If he would only stop smoking.

Mr. Philip: If he would only stop smoking--this has gone far enough, and we should simply go in camera and deal with the merits of the case based exclusively on what is in the file and discount any other information we may have heard.

Mr. Callahan: I want clarification before we do so, and it may be offending the question of getting more information. On page 36, Dr. E made a statement that the aromatic components of Stoddard's solvent or kerosene could be hepatotoxic. I asked you if that could happen and you said no. Do I presume from that you disagree with Dr. E?

Dr. McCracken: It is a presumption he is making, because he presumes it could. I believe this is exactly the same conclusion that the two industrial disease consultants have come to. I am attempting not to introduce my own opinion into this, because Mr. Bell has asked me not to, but their conclusion was that this compound, up to the present time, had not been identified as being a hepatotoxin.

4:30 p.m.

Mr. Callahan: Would you agree that alcohol would potentiate the hepatotoxic effect of other agents?

Dr. McCracken: I am afraid I cannot answer that. I do not know whether there is a synergistic effect, and I have not encountered that question. If a person ingests large amounts of alcohol and then is superimposed--exposed, say, to carbon tetrachloride--I am not sure whether that enhances the end result of his alcohol consumption. I cannot tell you that.

Mr. Callahan: Let us say my understanding is that alcohol will speed something through your blood and therefore it

will be cleansed by your liver. I am not a doctor, but that is the simplistic approach I take of what alcohol does for you. Would that not mean that alcohol, if it were present, would potentiate the effect of these other agents, such as butyl cellusolve?

Dr. McCracken: Again, I cannot answer that, because I do not know of any synergistic action between these two chemicals. I am not aware that cellusolve is a hepatotoxic agent; it has not been identified as such, according to the researches of the two industrial disease consultants at the board.

Mr. Callahan: Dr. E said butyl cellusolve in the dye the complainant was using will, if absorbed through the skin, exert a hepatotoxic effect. You disagree with that, I gather.

Dr. McCracken: I do not believe I disagree with it, but I am attempting to tell the committee that the two consultants at the board obviously were not able to agree with that observation.

Mrs. Catton: To correct the record: At the Workers' Compensation Board, Dr. J indicated that, from the chemicals outlined, butyl cellusolve could cause liver damage, but obviously Dr. C did not consider there was an adequate amount of it in the environment. There is at least some evidence that one of the doctors at the board has acknowledged that butyl cellusolve could be hepatotoxic.

Mr. Bell: Just to try to close this off as quickly as possible, Mr. Emmink, is there anything further you feel you want to add before we wrap it up?

Mr. Emmink: I have a couple of comments and, if the committee will bear with me, a couple of suggestions which may assist in deliberating this case.

I will try to state rather briefly the board's position in this rather complex case. I suppose the primary question facing the committee should be whether the Ombudsman was right in concluding that the appeal board's decision was unreasonable. As you well know, the word "unreasonable" can be defined in a number of ways, but they generally seem to convey something so far wrong as to completely lack reason. The definition in the dictionaries to which I have gone includes such things as "absurd" and "irrational."

I think everyone, including the Ombudsman, would agree exposure to substances known to be hepatotoxic would very likely result in liver disease. However, the question in this case is a little more basic: Was the complainant exposed to elements known to have a toxic effect on the liver? The board maintains evidence of such exposure has not been established, and obviously Dr. Hill agrees when he states that the lack of such evidence should not penalize the worker.

The question facing the committee is whether, in the absence of clear evidence of exposure to liver toxins, it was unreasonable for the board to conclude that the complainant's liver disease did not arise out of and in the course of the employment. The board

takes the view that the Workers' Compensation Act was not intended to be so broadly interpreted as to include under its umbrella cases in which exposure is only possible. I have referred to subsection 3(1) of the act, where it says "personal injury by accident arising out of and in the course of the employment is caused to the worker" should be the criterion.

The board does not dispute the Ombudsman's right to come to a different conclusion on the facts, but this should not necessarily make the decision of the appeal board unreasonable. Had there been clear and undisputed evidence of exposure to elements known to be hepatotoxic, the board's decision could well have been unreasonable. That, however, is not the case and, as I have previously indicated, Dr. Hill agrees.

One final comment I would like to make concerns the Ombudsman's reliance on observations made by Professor Weiler. It should be kept in mind first that Professor Weiler was speaking of scientific evidence in cancer cases and not liver disease. Second, he also states in the same report--and I will quote, "The ultimate judgement about cause and effect must rest, then, not on commonsense appraisal of facts visible to the eye, but upon delicate and sophisticated scientific theories about the cellular structure of the body."

Further on in his report, and again speaking about cancers, Professor Weiler states--and I quote again, "We may feel we have enough evidence to suspect the carcinogenic quality of an industrial process in principle, but this does not mean we can safely conclude that this individual claimant actually suffered his cancer as a result of his exposure to this process."

Finally, I would like to remind the committee that Professor Weiler recommended the establishment of an industrial diseases standards panel. The establishment of the panel is concluded in Bill 101, and the board would be quite prepared to refer the entire matter to the panel for consideration, should that be the committee's recommendation in this case.

Alternatively, should the committee decide the question is more predominantly medical, the board would be quite willing to have the matter referred to an independent medical specialist, in accordance with the procedure to which the Ombudsman has agreed, in cases where conflict of medical opinion exists.

In short, the board would very much like to do anything that might enable it to extend benefits in this tragic case, but to do so the act requires more than informed speculation as to the cause of the complainant's liver disease.

Those are the comments that I have.

Mr. Bell: Thank you. Dr. Hill, recognizing some time pressures, can you and your associates summarize your position after what you have heard?

Dr. Hill: Yes, it will take me just two minutes.

In respect of Mr. Emmink's comment regarding a referral to a panel, in my opinion referral to the panel or to a referee is inappropriate. There is sufficient expert medical evidence in this file to make a decision. Referral to a panel which is not yet constituted, where we do not know when it is going to be constituted and which is not intended to adjudicate individual cases, would only serve to delay; it would work an injustice to the claimant's family.

I also believe the board must make decisions on the basis of the evidence presented to it. It cannot require conclusive proof of a cause and effect relationship when there is no scientific evidence proving or disproving the relationship conclusively. It must examine and weigh the medical and other evidence presented to it and draw a reasonable, and I stress "reasonable," inference. In my opinion, the available evidence in this case supports Mr. M's claim.

Mr. Chairman: Any further statements?

Mr. Bell: I want to remind everybody that we will start the next Workers' Compensation Board case at 2 p.m. tomorrow rather than at 10 a.m. We will have a number of ministry representatives on other matters appearing before you in the morning, at half-hour intervals, starting at 10:30. I do not know whether the committee has made a decision to go in camera now on this case. It would be my recommendation that you do so while it is fresh in your memory, at least until 5 p.m. or so.

4:40 p.m.

Before you do that, I wish to comment on something that occurred this afternoon and requires a statement by me in public. It involves Mr. Morin and Todd Decker. Early this afternoon, in my opinion, and I believe in the opinion of others, Mr. Morin and Mr. Decker--in fact, the committee--were interrupted by someone who came in to ask questions of Mr. Morin. I commented on that.

It was not my intention, Gilles or Todd, to comment on your participation in that matter. It was my intention to comment on the individual who interrupted the committee. If my comments or the interruption embarrassed you or Todd, I do apologize for those. I have known you too long and I have too much respect for you to have done anything to embarrass you or Todd in the general function of the committee. Those comments had to be made.

What I do not apologize for is being angry that the committee's process was interrupted. At the appropriate time I will have a discussion with the individuals concerned to impress upon them the level of respect I have for committees' processes and the need not to interrupt what was a very complex and difficult session. It was unfortunate. As I say, if my comments embarrassed anyone, my sincere apologies.

Mr. Morin: I accept.

The committee continued in camera at 4:40 p.m.

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Government
Publications

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
TUESDAY, SEPTEMBER 10, 1985
Morning sitting



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Zacks, M., Director, Legal Services

From the Ministry of Education:

Waites, K. H., Education Officer, Curriculum Branch, Education
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From the Ministry of Health:

Campbell, M., Counsel, Legal Services Branch
Gould, P. J., Director, Nursing Homes Branch

From the Ministry of the Environment:

Jackson, M. B., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, September 10, 1985

The committee met in camera at 10:05 a.m. in committee room

2.

10:30 a.m.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Bell: I will deal with a couple of housekeeping items before we get into the formal part of the day.

Dr. Hill, the committee deliberated in camera yesterday after its public session and decided it will support your recommendation in detailed summary number 9 and will appropriately report with its own recommendation that decision in its next report. The committee continues to deliberate detailed summary number 3 and has not reached any decision yet.

There is something the committee would like you to consider before we discuss it in a more detailed way, either later today or tomorrow morning. That is the problem of Workers' Compensation Board cases in which there is a war of medical experts and the circumstance that happened yesterday of one of the board's representatives, Dr. McCracken, appearing and assisting the committee, and during the course of that assistance, giving his own opinions on matters that are potentially or actually medical opinions.

The committee would like to make a suggestion that you can consider and then we can discuss it and make a decision on it. Discussions, such as we had yesterday, if at all possible, should be avoided before this committee. The committee said in its third or fourth report eight years ago that such discussions should occur between your office and the respective governmental organization, well into your process. This comment is not intended to cast any criticism on anybody; it is just a statement of fact. It wastes your time and the committee's time.

We would like you to consider doing whatever is within your ability to initiate the discussions. It may be more possible, with what is on the horizon as to the new complement of the board, but we ask you to consider retaining your own medical expert during those meetings, so at least you can react immediately to things others have said.

There is a second part to that. After every effort on your part and on the part of the governmental organization, if the matter still is not resolved to your satisfaction and you have to attend before the committee, the board should continue to be entitled to bring its own medical representative, but at least on

a trial basis, the committee believes you should be too. I am sure you have paid many members of the medical profession nice retainers for their opinions. In my experience, an attendance of that nature is not inordinately expensive in the scheme of things.

I hope those circumstances will be rare. We will discuss it with Mr. Warrington, etc., this afternoon, but I hope, if the board understands that may be the process, everything can be aired before it gets to the committee.

Will you think about those suggestions and, as I say, we can have more detailed discussion either later today or tomorrow, when we get to the remaining items on the agenda.

Mr. Henderson: Did I understand you to say that if the board brings its medical expert, then the Ombudsman may bring his?

Mr. Bell: Yes. That is a good point. The board and the Ombudsman might agree in advance for neither of them to bring its expert. If that is the case, good; but if the board believes it would like to have Dr. McCracken, I think it is unlikely this committee would say to the board, "We do not want you to bring your medical adviser." Nobody should feel he is precluded from bringing anybody he wants to bring to the committee to assist it. On the other hand, the same should prevail for the Ombudsman.

Those are all of the housecleaning items.

Dr. Hill: I would like to respond. I think it is on the road to a possible solution to this problem, Mr. Bell, and I appreciate your comments. I would like just a little time, as you have suggested, to go over this with my staff and my counsel and to come back to you with any modifications or changes in the suggestion that I deem necessary. We are on the road to a solution to it. Thank you.

Mr. Bell: This morning will consist of attendances by representatives of a number of ministries to deal with recommendations, yours and/or the Ombudsman's, made in previous reports, which have yet to be implemented. I can give you the order.

We will first be speaking to a representative of the Ministry of Education, Mr. Keith Waites. We will then be speaking to one of the Assistant Deputy Ministers of Health in charge of nursing homes on an outstanding recommendation dealing with the Nursing Homes Act. We will then be dealing with Mr. Jackson, a representative of the legal department of the Ministry of the Environment, in respect of a recommendation you made to the ministry in your last report and the ministry's response thereto. Lastly, we will be dealing with an outstanding recommendation from the Ministry of Government Services respecting an amendment or a long since expected amendment to the Public Service Superannuation Act, I believe.

You should all have volume 1 of your material with you. We are going to deal with Ministry of Education matters first. I would ask Mr. Waites if he could come forward and take a chair in front of one of the microphones.

This is found in tab 2(viii)4. It is towards the end of the brief. If you just look at the tab that has 2 at the top and 4 at the bottom, you will see some material.

Mr. Waites, would you give your full name and your position with the ministry for the record, please?

Mr. Waites: My name is Keith Waites and I work for the curriculum branch of the Ministry of Education.

10:40 a.m.

Mr. Bell: To give members some background into this matter, you can see from the material under tab 2(viii)4, particularly page 3, being the Ombudsman's summary of the history of this, way back in his second report and way back in your third report, you made recommendations as to insurance coverage for incidents of the pure accident variety that occurred in a school setting in programs of physical education and related athletic activities and also in the technical shop progrms and for which coverage was more than the type of coverage available for school children now of so much per injury or loss. It is the type intended to compensate for loss of earning capacity and similar loss as a result of the injury and an inability to develop to full potential.

You made a recommendation in your third report, number 23--and I am looking at the column second from the right on page 3--and it was that the minister forthwith pursue discussions with the insurance industry and other interested parties, etc. It has been discussed--we are now going back to 1978--between your predecessor committees and the ministry since then. It formally surfaced again in your 11th report, recommendation number 3. You restated the third report recommendation and you specified that the ministry should do so by means of a policy of insurance on a province-wide basis before the end of 1984.

In your last report at page 9, you did not restate the recommendation again. You urged the ministry to move as quickly as possible, saying that you expected the recommendations to be implemented before the next hearings.

Mr. Waites has appeared before you on other occasions to give progress reports. You can see, as far as the Ombudsman is concerned, where he reports present status in the right-hand column. In fairness to the ministry, there have been some steps to implement the intent of the recommendation in part. For example, there is now coverage under the Workers' Compensation Act for some pupils who are legally enrolled in an education program, but are engaged in a work setting as part of their education and training. In that circumstance, the Workers' Compensation Act in cross-reference to the Education Act provides that those pupils are covered in the event of injury.

Mr. Philip: So if the kid cuts off his fingers at a plant where he is doing an internship, then he is covered, whereas if he cuts them off in the school, then he is not covered. Is that what happens?

Mr. Bell: That is what I understand to be the case.

Mr. Waites: Yes. What we term "work education programs" include co-operative education programs and work experience activities. The student is basically, as Mr. Bell mentioned, enrolled at a secondary school but out for extended periods in business and industry. That was implemented in September 1983.

Mr. Pierce: In a secondary education institution, if a student is taking, for example, mechanical shop and gets caught up in a lathe and loses part of his hand or whatever, does that mean he would be covered under that program?

Mr. Waites If it is in the shop at the school?

Mr. Pierce: Yes.

Mr. Waites: No. Only if he is out in a shop in the community. The purpose of implementing that program was to cover those areas in the community that were perceived to be more hazardous than a traditional school setting. You can appreciate in industry, it is a much larger, physical kind of arrangement sometimes with a much lower level of supervision than one can expect in the shop class at the school. As Mr. Bell mentioned, we have covered that area. Now we are working on the other areas.

Mr. Philip: Is the implication of this then that if the kid is hurt in the work place, the employer is protected from a lawsuit, but if he is hurt in the school, then the teacher and school board are open to all kinds of lawsuits by the child's parents? Is that not the implication of where we stand now?

Mr. Waites: Yes. At this point a student who is injured in school would really be relying on the insurance carried by all school boards. That is a requirement, but normally one would have to prove negligence in a major injury, whereas in the work place that is not necessary. Under the Workers' Compensation Act the students are covered under schedule 1, which means that the parent or the student could not sue the employer in the community. It does protect employers as well as providing automatic coverage for students.

Mr. Bell: Just a further supplementary, Mr. Waites. While the parent or the pupil may not sue the employer, I do not believe the legislation precludes the parent or the pupil from pursuing an action against the board.

Mr. Waites: I do not believe they can, but I am not a lawyer. I understood that if it is a schedule 2 employer such as a municipality--most of them would be schedule 2--then it is possible the employer could be subject to a lawsuit by the Workers' Compensation Board to recover its losses. I understood that the parent or the student could not sue either the school board, the teacher or the employer.

Mr. Shymko: Do I understand the recommendation suggested that students in an industrial workshop within a school setting be

protected and covered by the Workers' Compensation Act in the same way as protection is now given to students who are working outside the school setting?

Mr. Waites: I think the desire of the Ombudsman in the original report was to have a similar kind of coverage.

Mr. Shymko: Which means the WCB?

Mr. Waites: Yes, but I do not see any hope of involving the Workers' Compensation Board in that kind of activity because it basically covers people who are deemed to be workers or who are actively working in the community. Although I was one of the main people involved in this WCB coverage for work education students in the community, during those discussions it became apparent to me that we did not have any hope of having the board cover students per se who were in the traditional school setting.

Mr. Philip: As I understand the Ombudsman's recommendation, what he is asking is for some insurance that covers all students, not just technical students, who are in some way injured and, as a result of that injury, who will have their future earning power lessened or eliminated. A kid could conceivably be playing squash, and if he loses an eye and it can be demonstrated that this in some way affects his earning ability, then he would be compensated in some way by that private insurance. Is that my understanding of what the recommendation says?

Mr. Waites: Yes. That is basically the desire. In the original context there were shop classes and organized athletic activities. One can give various interpretations to the latter definition in particular, but our discussions last September really indicated to me a wish on the part of the committee to broaden the coverage to include--I know Mr. Van Horne brought up the question--science classes, home economics or family study areas, as we term them now. The result of last September's discussions would lead me to believe that the current desire is really to cover all students.

Mr. Philip: If Jascha Heifetz can insure his fingers against ever having anything, including arthritis, interfere with his playing again, why can you not insure a large body of students? Surely insurance companies are out there for the business. It is a matter of putting a price tag on it and getting on with the job. Why is it taking so long?

Mr. Shymko: Money.

Mr. Waites: It is a matter of the cost.

Mr. Philip: What is the cost? What is your latest quotation?

Mr. Waites: We do not actually have quotations. Some years ago there was an estimate that to cover the total school population would be approximately \$4 million. Obviously the value of the dollar and the number of students has changed since that

time, but I think to cover the total student population we are probably talking a premium of somewhere between \$4 million and \$8 million a year, obviously depending on the options and the kinds of payouts that one would select.

One difficulty we have always had is to have any concrete actuarial data not only on the incidence of accidents, but also on the severity of those accidents and the number of accidents that resulted in long-term disability. About a year and a half ago we estimated exposure hours and so on for the shop classes and organized athletic activities. Obviously we are going to cover the whole school population in the publicly supported area for all their school-sponsored activities or activities that are part of the regular school program, including those supervised by volunteers, which was a point that was brought up in last year's discussions. I think we could make a fairly accurate estimate of the exposure hours. The problem is we cannot find or develop any actuarial data on the severity of accidents. The process in the last several months really has been to explore the possibility of self-insurance.

Mr. Philip: That is what I was going to ask. Why have you not self-insured? That is surely the easiest way, to self-insure for two or three years, see what the cost is and then decide whether you want to continue to self-insure or float it with an insurance company.

Mr. Waites: That is an option.

Mr. Callahan: On a supplementary: Do I understand correctly that if they are outside of the school the Workers' Compensation Board will cover it, and the suggestion is that you carry that over into the school? If you did carry it over into the school, what effect would that have on the overall premiums of all employers? Surely the risk would be much greater in a nonworking setting with kids goofing around and so on and winding up having probably far greater injuries than would result in the work place. That does have an effect on the rating of the entire Workers' Compensation Board program, does it not?

Mr. Waites: It would, but as I mentioned, the WCB has not given any indication that it would ever agree to covering students while they are in school.

Mr. Callahan: I was a little concerned about that.

The second thing is there is a policy for insurance that you have alluded to, where if you lose a hand, an arm or whatever, you are covered for certain amounts. Would it not be better, if you are going to enlarge this program, to provide it on a fee payment basis by the student, as is the case now with the accident insurance, and enlarge it to include personal future earnings? I cannot possibly see the taxpayers paying for that type of coverage. We do not have it. Most people do not have it. What is the--

Mr. Philip: You do have it. You better check.

Mr. Callahan: I have got it now, but what I am talking about is that most people--

Mr. Sheppard: Before you were elected you did not have it.

Mr. Callahan: Yes. Most people out in the community do not have it. They have to pay for it if they want it. I would strenuously argue against any tax-supported coverage for future loss. I think it should be a contributory thing. They have probably got such a large conglomeration of kids. What is it, \$3 or \$12 maximum for a family, I think it is, for this injury insurance.

Mr. Waites: I think you will find you have extremely limited coverage for that \$5 or \$12 fee.

Mr. Callahan: You are covered for everything except a future loss.

Mr. Waites: However, regarding the limitations, the last policy I looked at, for example, was about \$3,500 for a total medical payout type of coverage, including dental. Some of them go as high as \$50,000, for some of the team sports at the college level. I have a copy of a policy in that area and for football it costs \$50 a year or something in that range. I am not exactly sure of the figure now, but the maximum payout is \$50,000. If you are a paraplegic, I might suggest that is perhaps not adequate for what was envisaged with respect to coverage for students. I do not know whether you would suggest, if the ministry should not become involved financially that this should be a mandatory coverage for parents, or what your thoughts are on that issue.

Mr. Callahan: It is not mandatory at the moment. They can take out student accident insurance. It is a wise thing to do. It is probably the cheapest insurance they can get for their kids, but my major beef is the policy. It is terrible. They put you through hoops to try to collect. You have to observe all these silly little rules about notifying them within a certain time. I have heard more beefs about that insurance than praise. All I am saying is that if you are going to do it, it seems to me it would have to be on a contributory basis by the student. I could not possibly see the taxpayer bearing the costs. It is a special program. It looks after the individual's future earnings. I think that has to be done privately.

Mr. Henderson: I am grappling with what seems to me the paradox of saying the holdup is cost at the same time as there have not been any actual quotations provided. Could the insurance companies not be invited to submit some figures? They can sketch whatever parameters they want as long as they make clear what they are quoting. That would provide some figures on which to base a statement that it is probably going to be too costly, or maybe there has to be some form of payment on the part of students. We would know a little more of what we are discussing if some kind of figure had been provided. That is the first question.

The other is, what about other jurisdictions? Does that

provide any assistance? Have other jurisdictions come up with some plans or proposals which would be a useful basis for a comparison? They might even have some figures attached that we might consider.

Mr. Waites: Perhaps I will respond to the second question first. Through the insurance industry, we have tried to identify policies in either Canada or the United States and have been unable to do that.

Getting bids from the insurance companies is a possibility and it is one we considered last fall. The first step is to develop a package or policy so they would all be bidding on a comparable basis. We considered that last year about this time. The difficulty is, if you involve an insurance brokerage firm to develop that package, then it has some ownership in it and can, if you will, negotiate with a variety of companies who, in their view, are capable of providing the proper kind of claim service, etc. that would be required.

If you proceed with the insurance, you are also committed to a particular company. Because of the expansion of the area for coverage with respect to the number of students from the original shop classes and organized activities to the whole school population, we could see the costs soaring considerably and we felt we should at least keep the option open for self-insurance. That was in dialogue with some insurance people in the Ministry of Government Services, where they have some expertise in the general insurance area.

11 a.m.

We have asked a consulting firm to give us a proposal identifying costs and so on, what it would really cost--is to develop the policy per se on a fee-for-service basis.

I do not know whether this will be accepted or not, but it is our proposal at the moment to develop this package. Then either we could call for bids from companies for the total package, including the servicing of the claims, etc., or we would have the other option of self-insurance and perhaps entering into a contract with an insurance firm to service the claims and manage the policy.

I have a meeting next Monday to discuss their proposal and get down to the specifics about what kind of service they could provide.

Mr. Henderson: What does the date of May 4, 1977, in here mean? Does it mean that this issue has been in the works for eight years and that there are still not any figures and proposals?

Mr. Waites: Yes.

Mr. Shymko: We certainly commend the ministry for the amendment to section 8 of the act to include a number of pupils who have been engaged in work-related programs outside a school setting for a number of years.

I still am surprised that, as my colleague mentioned, the recommendation has been outstanding for approximately seven to eight years. The ministry responded in 1977 that it would be taking steps to meet with insurance industry representatives. You are telling us that on Monday you will be meeting to finalize the two or three options that are available. I find it surprising that after eight years of deliberations you do not have any facts or statistics and a statement or a response that steps have been taken to meet with insurance companies.

Mr. Callahan: It is well thought out.

Mr. Shymko: Unless it is really such a complicated issue. I just wonder whether the fact that you will be meeting on Monday is related in any way to the circumstances of this committee meeting and going through the recommendations. I hope not.

What is the name of the consulting firm? Is it a firm that you have been engaged with for a while?

Mr. Waites: We have had ongoing discussions with them for more than a year now.

Mr. Shymko: For more than a year.

Mr. Waites: It may not necessarily mean that this is the only firm with which we will discuss it, though, before we--

Mr. Shymko: Is this the only firm? Have you discussed it with other firms before? Is it just a year ago that you actually got the consulting firm?

Mr. Waites: Another consulting firm was involved a number of years ago, before I was involved in it. We talked with the Canadian Life and Health Insurance Association and asked for recommendations of companies that might be able to provide this kind of service. It gave us about three names, and this happened to be the firm we selected.

Mr. Shymko: You obviously are aware of the two options that the ministry will have, the first being that of a fee-for-service approach and the other being self-insurance. Is there any indication which way the tendency or the weight is going with regard to cost?

Mr. Waites: That is difficult to say at this point. The process I envisage, anyway, is to develop the policy, and then perhaps we could still invite comparable bids on the basis of that policy from potential carriers and at the same time consider whether or not, depending on the prices they come up with, we should seriously consider self-insurance with the employment of an insurance management company to adjudicate the claims and look after the operation of it, as suggested, perhaps for a two- or three-year period until we develop some more solid actuarial data. Then it might make sense, or perhaps we would be better advised at that time to get an insurance carrier to look after the whole thing.

I think our concern, at this point, is with the lack of actuarial data which is really needed, there has to be a fair amount of reserve in the bids for the unknown.

Mr. Shymko: Is there any predictable projection of time when a decision will be made by the ministry? You are meeting on Monday, and you know the options that may be available. You will probably have an idea of the costs involved. Can we foresee some kind of an action or decision taken within a year's time?

Mr. Waites: The only cost we will be aware of on Monday is the cost of developing or designing the insurance policy. I do not know yet how long that will take. I would guess perhaps a couple of months, three months, at which time we will hopefully have settled on the options, at any rate. The next step will be to secure prices on that from insurance carriers. I think that is a step we should proceed with. It does not cost a lot of money to get some idea, as suggested earlier by a committee member, of what the package is going to cost. Then we will have to decide whether that is affordable, if it is in the \$4-million to \$8-million range, or just where we proceed from there.

As mentioned, I appreciate your comments about workers' compensation coverage for students in the community, but I have to tell you that is a much less expensive package. The cost to the ministry at this time is about \$80,000 a year, which is quite a different scale from \$4 million to \$8 million.

Mr. Shymko: This is my final question. I just wanted to ask the Ombudsman whether he did intend to have what he termed as a comprehensive insurance policy for all students to be made within the framework of the Workers' Compensation Board.

Ms. Bohnen: No, Mr. Shymko; in fact, I think this year is the first year I have heard the suggestion that WCB coverage be extended to students in the classroom. That was never previously considered. It was a general policy of insurance that was considered.

Mr. Shymko: But I am sure you were aware that certain students are involved in programs that demand work outside of the school setting and that WCB coverage would make sense.

Ms. Bohnen: For those students WCB coverage is a sensible solution, but we do not think it would be workable for the reasons Mr. Waites has given.

Mr. Bell: Mr. Waites, if we can draw it together, the May 1977 date has already been referenced. I think you have a sense, and probably had it last time, that the committee has had enough of the discussion of this matter. I am sure you and your colleagues have as well.

Can we have some commitment out of you, sir, to have within a specific period of time a final position of the ministry on this so that the committee can deal with it? Literally for the past eight years, the committee has not dealt with the ministry's

response because the response has been an ongoing consideration of the matter. Beyond urging the ministry to conclude matters quickly, nothing has happened.

Can we have a commitment from you as to the two issues: Whether the coverage is available, and whether you can write a policy such as this. Members of the committee, it is not coverage for all events; it is coverage on a pure accident basis, whatever that may mean, but it certainly means coverage in situations where nobody else is responsible.

In the fortuitous, but unfortunate event where boards of education are responsible for the injury or third parties are responsible, then there are other means of compensating that individual and this policy never comes into play. It is almost excess disaster coverage, and the figure of \$4 million is a potential premium that I know has been quoted at least once by the insurance industry, whether that figure remains or not. But that is the other issue, the issue of whether the coverage is available.

The other issue, quite frankly, is whether the ministry is prepared to afford all or a portion of that cost. Your response, Mr. Waites?

11:10 a.m.

Mr. Waites: On the first one, whether the policy is available or not, we have had some discussions on this before. It depends on the nature of the payout. If it is a lump sum payout of \$150,000 or \$200,000 after a given period of time when the degree of permanent disability has been assessed, then yes, it is available at some premium. If it is the continuing lifetime support the WCB gets involved in, then no, that kind of policy is simply not available.

The insurance companies have told us that for years. I mentioned in last year's discussions that Lloyd's of London, for example, will not get involved in any policy that has a payout longer than five years. However, a policy with a very handsome lump sum payout would be available if that is a satisfactory policy to the committee.

Mr. Bell: Then there is only one issue remaining to be discussed, whether the ministry is prepared to afford the cost in whole or in part. When can the committee expect that decision?

Mr. Waites: I honestly cannot give any clear answer on that. I do not have decision-making powers, but I can--

Mr. Bell: Of whom should we be asking that, sir?

Mr. Waites: I can only suggest correspondence with the minister, and it will be dealt with there.

Ms. Bohnen: I would like to ask the committee in its deliberations to consider recommending, in view of the time it has taken to develop firm answers, that the ministry opt for self-insurance for a period of time until it is possible to

develop the data in complete consultations with the insurance industry, with the objective of getting a policy of insurance.

Mr. Chairman: Mr. Callahan, followed by Mr. Baetz.
followed by Mr. Philip.

Mr. Callahan: As I read this report and as I listen to the Ombudsman, the Ombudsman was basically concerned about seeing that students, while out in the co-op program or out working in industry, would be deemed to be employees and entitled to the same benefits as people working in the work place. The recommendation of the committee is far broader than that.

The recommendation of the committee, as I read it anyway, is that students be covered in shop classes and organized athletic activities. I do not think I, for one, could ever consider that. The cost would be absolutely horrendous.

In addition to that--and maybe Mr. Bell will bear me out in this--even if that coverage were in place, if the student was injured in a shop class because of negligence of the school board or in the athletic activity because of negligence of the school board and he sued the school board, I do not believe he would even have to make a deduction from any claims he would make for loss of income or for anything else because of that insurance coverage. That would be extra, depending, I suppose, on whether he pays for it or the board pays for it.

By getting into that type of thing, you are attempting to solve all the world's problems. If the intent is to make certain that every student, if he is injured in school, in shop or in athletics, is going to have an income for the rest of his life, that is a very admirable consideration, but I think it is too costly and the inequity of giving it to students and not to the other citizens of Ontario is absolute nonsense.

Quite obviously, I was not on the committee when the request was made by the Ombudsman, but if I read it correctly, all he is concerned about, for two reasons I suppose, is seeing that young men or women going out into business are going to have the same protection they would have if they were employees. That makes sense from the standpoint of the student and it makes sense from the standpoint of the employer in encouraging him to employ. He would be crazy to employ students in a co-op program if he figured he was going to get sued rather than coming within the framework of taking that lawsuit away and providing for it by way of workers' compensation.

If we are asking the ministry to develop an overall comprehensive policy and premium for covering students in shop classes and organized athletic activities, let us not make the ministry waste its time. I cannot believe that should be made available through the public purse or should even be considered. There is currently accident insurance that covers that, is there not? It is optional. Kids can take it out.

Mr. Waites: Yes, on a voluntary basis.

Mr. Callahan: They pay a certain premium. To address that issue, I suggest the ministry make it an arrangement with one carrier when negotiating these insurance contracts. It seems every school board has its own carrier, and I am sure it costs more to do it that way. It also does not provide for an enriched policy. There must be 20 or 30 insurance companies, all having different contracts. You do not get very far ahead of the game with the tendering on that. I could not support anything beyond the request to the Ombudsman. That makes sense. The rest of it I would endorse as a father, but as a responsible member of the Legislature, I could not endorse it.

Mr. Bell: On a point of information, the committee's recommendation, the 23rd in its third report, is in substance identical to the Ombudsman's recommendation. He recommended that the two circumstances covered would be athletic activities and shop-class activities. The committee merely took that forward. The point of confusion last year may have occurred when we met and discussed it with Mr. Waites last year.

Ron Van Horne, then a member of the committee, said: "Wait a minute. Why confine it to those two situations? Why not look to the similar risk situations." In fairness to Mr. Waites and the ministry, in this last year they have been distracted by that additional issue. I do not believe it was the committee's consensus, although it was discussed at that time, to widen it. Last year the committee wanted to address the issues we have had since 1977 and make a decision on those one way or another. Depending on those decisions, expanding it in the future may be something for discussion.

If the committee decides it does not want to have the ministry pursue the type of coverage as set forth in the 23rd recommendation, the effect of that is to say to the Ombudsman that we are not supporting that recommendation any longer. The committee can change its mind, as can other people. That is its prerogative. That is the issue to be put in that area.

Mr. Callahan: Is that what the Ombudsman is saying? I gathered from counsel for the Ombudsman that it was limited to the work place.

Ms. Bohnen: The intent of the original recommendation was not limited to the work place. I was trying to respond to Mr. Shymko's question. The contribution in the form of premiums by students has never been rejected by the Ombudsman or your committee.

Mr. Callahan: I still see it as a conundrum. Unless you made it a condition of that insurance, particularly if it was going to be paid for by the ministry, that they could not sue the school board, what would be the benefit of having it? They then get both of the options. They can sue the school board and also collect the insurance.

Interjection.

Mr. Callahan: No?

Mr. Bell: The intent of the coverage is that it is only available where there is no fault for the injury with respect to the board or third parties. It is a pure accident matter, which is why they extended the coverage, which was not that large. There are a lot of events that are simply fortuitous events, where all the supervision and instruction has been provided and due care is taken, but the child still falls on those rinks. It happens a lot. The Court of Appeal has recently said it recognizes that those fortuitous events happen, except there is a quadriplegic lying on the mat. Those are the situations the Ombudsman and the committee want to provide for.

Mr. Callahan: But you will agree that you would then get into the contest between the insurance company and the school board, with the insurance company saying it was not an accident, joining the school board, and we would be into litigation over who would pay.

11:20 a.m.

Mr. Bell: That issue would be put in many of the cases where a lot of money is at stake. One carrier would be saying no. It may even be a condition of the policy that you have to exercise your rights as against all other parties before it kicks in. That is a practical problem. However many it may be in the province in a year--mercifully, I think it is very few--the intent was that there would be something available because, if there is not, unless the family is independently wealthy, there is going to be a cost to the province in health and related care.

Mr. Baetz: I have a number of questions. What is the genesis of all this? Where did it all start? Did the Ombudsman get a case from a student or from parents where a student was hurt and nobody was ready to support him. What was it?

Ms. Bohnen: You are asking difficult questions, Mr. Baetz. This is going back a long time, but if I recall--

Mr. Baetz: And the memory of man runs dim.

Ms. Bohnen: And woman, too. As I recall it, the Ombudsman received a complaint from the family of a student who was injured in a shop setting, but to be perfectly honest, I cannot remember whether it was in a school or a private firm. In any event, the result was that because there was no insurance coverage available and negligence could not be proved, there was no compensation available to the student and his family. That led to the recommendation that insurance coverage be made available for such students engaged in these activities.

Mr. Baetz: So it went from there and then the committee apparently expanded, as Mr. Callahan has--

Ms. Bohnen: I do not know that the committee expanded it. I trust Mr. Bell when he says that what you see in the second column from the right is the Ombudsman's recommendation verbatim, which is paraphrased in the column on the left-hand side of the

page.

Mr. Baetz: Yes, because suddenly the parameters of this whole thing were vastly expanded.

Mr. Callahan: I am not sure they were.

Ms. Bohnen: I do not think they were.

Mr. Callahan: That is a mistake in reading that. I do not think they were.

Mr. Baetz: Oh, I see. Maybe I made the same mistake then.

Ms. Bohnen: No.

Mr. Baetz: Anyway, we are looking at a very broad subject here. Is that right?

Mr. Bell: No, we are not. I still remember Arthur Maloney sitting where Dr. Hill is, saying: "Look, I do not want you to get the idea that this is a sweeping type of coverage. It is to provide for the very limited circumstances of organized athletic and shop activities on a pure accident basis." Having made the committee understand that was the scope, he convinced it to accept his recommendation.

Particularly in the last 12 months with the committee's discussion, the question was put, "Why limit it to those two circumstances?" The committee did not decide to expand it, but Mr. Waites, in particular, assumed the committee had. There has not been any decision of the committee. In fact, the scope should not be expanded now. If you do not deal with the issues you have in front of you this way, you are never going to deal with them by opening it up, as suggested.

Mr. Baetz: Are we talking here about elementary and secondary schools and community colleges or are we also talking about universities?

Ms. Bohnen: We are talking about--

Mr. Baetz: Students.

Ms. Bohnen: --elementary school students and high school students and not community college and university students.

Mr. Philip: Are all the school students in shop situations out in the work place?

Ms. Bohnen: We are not talking about just the work place but about organized athletics or shop within the schools.

Mr. Sheppard: That would include the mentally retarded, too, on Bill 101.

Mr. Baetz: Certainly not universities.

Ms. Bohnen: That is right.

Mr. Baetz: Yes. Obviously, we have a case right now at Sir Wilfrid Laurier University where a lot of questions are going to be asked about what compensation there is if a coed is pushed under a bus and killed in a student-organized activity.

The final observation I would make here is that it seems obvious that the ministry is slightly overwhelmed by the request and has been doing a little water treading. It is not on its front burner. It is not the sort of thing where you wake up in the morning and say, "This is something we have really got to get down to." I suspect that is the case.

Mr. Callahan: Before they get out of bed.

Mr. Baetz: I suspect that is the case.

Mr. Philip: Once a year they say, "Oh, my God, we have got to go and make some rationalization before the Ombudsman's committee and defer it for another year."

Mr. Waites: In defence, we do work on it in between.

Mr. Baetz: What the committee really asked, starting in 1977 was simply that it be provided with some facts, some data, some recommendations, some conclusions. Is that not so?

Mr. Bell: No. The committee also said, "We think coverage is appropriate and please implement it."

Mr. Baetz: Implement.

Mr. Bell: The question is open about who funds it, whether it is to be wholly or partially funded. Even though the committee at one point said what its intention was, it is an open issue whether it should be partially or wholly funded by the ministry and conversely by the pupil and the family.

Mr. Baetz: I have some of the same reservations that I hear Mr. Callahan having here. If the committee does not really know what the costs are here or if it does not have a real handle on what is involved, I would have some problem in saying implement it, but I would have no problem in saying to the ministry: "We have asked for some facts on this. Get on with the job."

I think the ministry has to understand the role of this committee. It is not just a nice, pleasant matter of saying, "Please do this if you ever have time." I think the committee has far more power than that. I would say quite politely: "Get on with the bloody job. Do it. Get the information."

Interjection.

Mr. Baetz: Do not put that in.

Mr. Callahan: The jury will strike that from their minds.

Mr. Baetz: I would have some real problems in saying, "Get on with the job," if neither the ministry nor this committee at this time really knows what all the implications are for costs and everything else. I do not know precisely where I come down on this one at this point.

Mr. Philip: You made the comment that the insurance companies would not want to get into a Workers' Compensation Board type of insurance--and I can understand that--but a lump sum would be a different matter. I can understand why the insurance companies do not want to have a constant recycling of somebody saying, "My condition has become worse and, instead of a 30 per cent disability, I want a 50 per cent one." We had the argument yesterday between one doctor and another that we go through with workers' compensation.

Surely it would make sense, though, to have some kind of annuity system. If you can get a lump sum, you can have an annuity system built in, except in those instances where the claimant could show that by getting the lump sum he could somehow become self-employed by setting up a business or something like that. It does not necessarily mean you are going to pay out \$200,000 for a limb.

Mr. Shymko: On a point of order, Mr. Chairman: As members of the committee have noticed, congratulations are to be extended to the chairman, who just got married yesterday. We wish him well.

It was an in camera decision, I believe, Mr. Chairman.

Interjections.

Mr. Chairman: We may as well get on with the business of the committee.

Mr. Philip: I must say it is pleasant to spend your honeymoon with you.

Mr. Shymko: It sure took you a while, Ronnie, to decide.

Mr. Philip: All I can say is that it is a lot longer honeymoon that I am having with you than I had with my wife.

Mr. Shymko: We suggest February in northern Ontario.

Mr. Baetz: I wonder if he was affected by the headline in the Toronto Sun today, "60 and Sexy!"

Interjection: Is that off the record?

Mr. Shymko: That is on the record, by the way.

Mr. Philip: I somehow have forgotten the rest of my question.

11:30 a.m.

Mr. Bell: May I just remind committee members, I again confess my scheduling is all to hell. We have three other matters on the agenda to finish this morning. That may be a fond hope now, but I would like to have at least two of them dealt with because one involves the attendance of one of your colleagues. If there are no other questions on this, we could proceed.

Mr. Sheppard: I have a question and I think I was after Mr. Philip before I was cut off. I just wanted to finish with Mr. Baetz's question. When the solicitor for the Ombudsman said "firm" about the students, was she referring to those in elementary, secondary and I would say now retarded children? What does she mean by "firm"? Does she mean high school students who were out working in a firm for two or three months or what?

Ms. Bohnen: Yes. I was referring to students who were not in a shop class within the school, but were placed with a firm or company in an industrial setting. I said they were covered by workers' compensation because of the amendment the ministry has made. The other students about whom we are talking are elementary and high school students participating in shop classes and organized athletic activities within the school.

Mr. Sheppard: I have one other question. I do not know whether either party can answer it. Have you any idea how many students have been injured per year in the last five years, or up to 1977?

Ms. Bohnen: No. I gather that is one of the questions the ministry has been trying to answer for the past seven years.

Mr. Sheppard: My grandson fell off the monkey bars a year ago and broke his arm. It was set and then they had to rebreak it because the doctor did not do it properly. I presume that with something like that, if his parents had wanted, they could have sued the school or the doctor.

Mr. Philip: The Ombudsman was only taking about those injuries that will affect future employment.

Mr. Waites: There was a fairly comprehensive study done about three years ago, I believe by McMaster University, covering all the school systems, public and separate, in the Hamilton area. I am not sure whether it included Wentworth. Although there is a lot of data there in terms of injuries, the grade level at which they occurred and whether they were in school or out in the playground or whatever, there is really no data whatsoever in terms of incidents of permanent injury. That is the missing component. Students break an arm, but you know what it is like with younger children in particular; a month later they are fine and there is really no problem.

Mr. Sheppard: Is the Ombudsman's recommendation just strictly for elementary and secondary and mentally retarded students, not universities or colleges?

Mrs. Bohnen: That is correct. It is all students in the elementary and high school levels.

Mr. Sheppard: Thank you.

Mr. Callahan: I have a supplementary. Where would all this money go, Mr. Bell? Would it not go to the official guardian to be administered? He is going to have to have an awful large office because, until they are 18, all that money would be in his hands to look after.

Mr. Philip: That is one of the details they are supposed to be working out.

Mr. Bell: Not necessarily. I should not be so categorical, but when there is a payout under an insurance policy for an infant, proceeds can be settled on a trustee without the direct involvement of the official guardian, as long as there is compliance with certain provisions of the Trustee Act.

I do not believe there would be any significant increase in that participation or that one would have to involve the official guardian at all. For example, with the insurance that is currently available, if somebody loses an eye, I think the payout is \$8,000 or \$9,000. The official guardian is never involved in that. Most of the time it is paid out to the parents, but it should be paid out to some cestui que trust in favour of the child.

Mr. Henderson: I just wonder if this whole matter has not come to grief a little bit because it became too wide-ranging. I am wondering if we returned to the original notion that there be some plan put together which would cover athletic injuries and shop injuries affecting future employment.

I would say at the expense of the ministry, because if you try to do it otherwise, it becomes very complicated and you have to get into means and all of that. Would not something as relatively straightforward as that be fairly easy to price and come back with some quotations, and perhaps even reasonably inexpensive, because it is a fairly limited package? If we tied it down in that sort of way--I am echoing Mr. Baetz's comment or question--with a polite request that someone get on with it, would that not be something which could be expedited fairly quickly?

Mr. Waites: I think we could get prices, yes. As I mentioned, you are probably looking at two or three months to design a specific policy, whether it is limited to the shop classes and organized athletic activities, which is a much smaller and easier group to cover obviously than the whole school population, which I really felt we were getting into--

Mr. Henderson: It could always be initiated in that sort of a limited way. Later on someone can decide it ought to be expanded, but at least there would be something in place and after eight years or whatever it was come to some form of fruition.

Mr. Waites: The other option, of course, would be--

Mr. Philip: I have a motion that would deal with this, Mr. Chairman, if we combine Dr. Henderson's concerns.

I propose that the committee, in light of the fact that this has dragged on since 1977, respectfully request that the Ministry of Education develop a program of insurance with regard to injuries created by school-related sports or shop activities which result in the loss of future earning power and that the Ministry of Education report back to the committee on the progress that has been made when the committee sits in the Christmas recess.

I would also ask that the Ministry of Education look into the suggestion of the Ombudsman that self-insurance might be a method for the first couple of years of finding the actual costs of this program.

Mr. Pierce: I have a question on Mr. Philip's resolution. I realize it is not our place to decide how you determine what is an accident that reflects loss of income, but I just question how you do that. If a student is injured in a shop-related accident when he is 15 years old and he loses an arm, is that considered as being an income-lost accident?

Interjection.

Mr. Pierce: If he goes on to become a lawyer, the accident did not relate to his loss of income. He does not need two arms to be a lawyer.

Mr. Callahan: You need an arm if you are a lawyer.

Mr. Pierce: But just one.

Mr. Bell: You need a mouth, anyway.

Mr. Pierce: I make a point of this. There are operating lawyers who are short of arms or who are blind, as an example. Yet loss of sight at that stage of the game, at the age of 16 years, in a shop-related accident would be considered to be a detriment to his ability to earn an income. I am sure it would. Yet that particular student could go on to become a lawyer, or whatever profession, even though he is blind.

Mr. Philip: I could never become a lawyer without the use of my hands because I could not talk without them.

Mr. Pierce: You would wave something else around.

Interjection.

Mr. Philip: I do not know what you are alluding to.

11:40 a.m.

Mr. Pierce: I wonder about the mechanics of the whole program. I wonder about the committee recommending or suggesting that the ministry spend a lot of money in putting together a package which you are not going to be able to afford to buy once it is together.

Interjection.

Mr. Pierce: How much money is this committee prepared to recommend the Ministry of Education spend on putting together the information it wants?

Mr. Philip: I am prepared to have the ministry stop coming back to us year after year saying, "We do not know what the answers are." I am asking that the ministry once and for all report back on what the costs will be and whether or not it is feasible. I think it is possible to do that. If the Workers' Compensation Board and other bodies are able to put a price on a certain injury, and if insurance companies are able to insure for all kinds of injuries, I cannot believe that the ministry cannot, with the help of the insurance companies, come up with a proposal. All I am asking is that they stop coming back to us year after year and that they come up with a specific proposal.

I recognize perhaps the committee gave them an excuse for flying around by getting off on a sidetrack last year, but surely what we have is a very specific type of problem. For those who lose the use of certain parts of their bodies as the result of an injury and thereby have their incomes reduced, I think we can put prices on that. They are able to price every other type of injury.

Sure, somebody may go on to be a multimillionnaire. He might lose both eyes and he may still become an excellent stockbroker or some other thing, and that is great if he is able to do it. But I am sure the ministry can come up with a dollar figure on different types of injuries, based on the likelihood of impairment to lost income. That is all I am asking it to do.

Mr. Shymko: I had an impression from the questioning of the ministry's representative that indeed you would be meeting quite soon--I think you mentioned Monday--and that within a framework of three to four months we would see a decision made on options available.

I support the motion to have a recommendation that assures the committee of such a decision being made and certainly I have no objections to that. The objection I have to the wording of the recommendation is--in previous committee deliberations a number of committee members have pointed this out--to mention specifically only students engaged in industrial shop activities and athletic activities is really unfair and discriminatory, since many students are susceptible to injury in home economics classes, in chemistry lab experiments and in other activities where the potential for injury is there.

I look at the recommendation from the second report of the Ombudsman, which does not make that distinction, but is simply quite universal in saying that a more comprehensive insurance policy should be made available to students. It would provide compensation for injuries resulting in the loss of future earning power.

Having gone through deliberations and discussion, I think there is a much wider group in the student body that may be

affected by these accidents, and we should not limit it to two specific categories of students.

Mr. Philip: It may be necessary to define what shop is. Shop may be a lab and it may be a home economics class. I am not sure exactly what definition you want to put on that, but surely at the present time we have a situation where the injured party has to sue. If the principle holds true for workers' compensation that the system was an archaic one, then surely it holds true in this kind of situation. It is up to the ministry and the insurance people to develop this. Obviously, the cost and the coverage will vary depending on how wide the definition of "shop" is, but that can be defined.

Mr Shymko: What is wrong with the wording of the recommendation of the Ombudsman's second report?

The Vice-Chairman: We are behind here. I am going to ask the Ombudsman if he wants to sum up in a couple of minutes and then we will hear from the Ministry of Education. Then we will go to legal counsel, and that will be it.

Ms. Bohnen: It seems to us that before the committee can make any decision that would alter its previously expressed recommendations, information is needed from the Ministry of Education. If in its deliberations the committee began to form the view that its recommendation ought to be changed in a fundamental way, the Ombudsman would like an opportunity to speak to the merits of the issue and the recommendation once again, but at this point we need more information.

The Vice-Chairman: You might want direction from the committee too, so the Ministry of Education can make comments before the Ombudsman.

Ms. Bohnen: Yes.

The Vice-Chairman: Do you have any comments at this time on behalf of the Ministry of Education?

Mr. Waites: One possible course of action might be that if we can design the insurance package, we can conceivably ask for the prices for the limited group of shop classes and organized athletic activities and define what they are. In my view, shop classes were technological and did not include home economics and so on. Anyway, we can define that. We could ask for a price on that group or for a price on the total school population. Then at least we would have some basis for deciding what group should be covered.

Mr. Callahan: Might I suggest that when they are doing this, they might want to approach the people who insure pretty well every kid in Ontario at present under lump sum accident to have them add an additional clause. We are really talking about long-term disability. The programs and the plans are there. They may be prepared to quote on that as an additional factor.

The Vice-Chairman: Did anybody ever think to ask the

individual boards of education to insure the students in each board? That is just a thought.

Mr. Callahan: The seniors would have to pick up the cost of that, and I do not think that is fair. The seniors are currently paying for education even when they do not have kids in there.

The Vice-Chairman: Yes, but they are still paying even through the Ministry of Education because they pay property taxes too.

Mr. Bell: It is too costly on a board basis.

Mr. Callahan: I think so too.

Mr. Bell: There has been a lot of discussion and the questions have to be put. There is a fundamental question the committee will have to wrestle with in camera when it deliberates, namely, is there to be a change in any way in its recommendation? If not, then the question to be put is to urge the ministry to do all the groundwork yet remaining and necessary to decide whether coverage is to be initiated in some qualified, restricted or contributory way. As I say, you have enough to comment in your report and give direction to the ministry and the Ombudsman.

Mr. Philip: Would Todd read my motion?

The Vice-Chairman: Yes. I will ask our clerk to read Mr. Philip's motion now.

Clerk of the Committee: "The committee requests that the ministry prepare an insurance program related to the injuries sustained in sports and/or shop activities by students in elementary and secondary schools, which result in loss of future earnings; and that the ministry report to the committee during its winter sittings."

Mr. Callahan: I thought it was during Christmas recess. Winter sittings could be in 1986.

Mr Shymko: The problem I have is that, according to the comments from the ministry, its interpretation of shop activities is quite different from that of Mr. Philip.

Mr. Philip: They said they can bring back--I have suggested this to them also--different quotations on the cost depending on the definition of "shop" or how large an umbrella they want to put the program under.

Mr. Chairman: All those in favour of Mr. Philip's motion? Opposed? Carried.

Motion agreed to.

Mr. Bell: Thank you, Mr. Waites. I appreciate your attendance.

11:50 a.m.

We are not going to finish all the matters on the morning's agenda, but let us see if we can do at least the next two. If you turn to tab 2(viii)5, which is the next tab, I will ask Mr. Gould and Mr. Campbell to come forward. You do not have to address this case as you did for the Ministry of Health. The issue is not whether something will be done. We are just going to talk about when it will be done.

In practical terms, the recommendations described on page 3 of that material have been implemented, those having to do with the Ministry of Health's process in tendering and awarding licenses in respect of nursing homes. Appearing before you today is Mr. Paul Gould, who is the director of the nursing home branch of the Ministry of Health. With him is Mr. Campbell, a member of the legal branch of the Ministry of Health with particular responsibilities for nursing home matters. To digress, Mr. Gould and I used to reside in the same building when we were both newlyweds.

In the last paragraph, under the present status of this material, you will see that necessary amendments have yet to be enacted. When Keith Norton was Minister of Health, he proposed an interim arrangement whereby, on any call for proposals, the ministry would undertake to the successful proposer that he be awarded a licence, provided he constructed and established the home in accordance with the act and the regulations. This interim arrangement was acceptable to the Ombudsman and this committee. The discussion now is about when the formalization into the legislation of that interim arrangement can be included.

Mr. Campbell: To confirm this, the practice the committee accepted some time ago continues to this day and will continue until the legislation is amended. I have been authorized by the assistant deputy minister, Mr. Kealey, who is responsible for the nursing home operations, to inform the committee that it is the intention of the minister to bring forward amendments to the Nursing Homes Act, we hope this fall, but possibly this spring.

Among the matters to be included in the amendment will be provisions respecting the practice which has been adopted administratively. We would expect to bring something forward in the very near future.

Mr. Bell: It is the opinion of the assistant deputy minister and yourself that the proposed amendment will substantially formalize the interim arrangement?

Mr. Campbell: That is correct.

Mr. Bell: You do not see any loose ends at present.

Mr. Campbell: There may be some housekeeping matters which will more fully address the proposal system and so on. Besides that type of housekeeping matter, there will be the provision to cover this particular practice.

Mr. Poirier: In 25 words or less, could I get a reason why this was asked for? What was the condition?

Mr. Bell: An individual in a local community complained to the Ombudsman that he was wrongly treated in the proposal process. The Ombudsman recognized certain deficiencies in that process and made recommendations. The committee accepted that recommendation, which included safeguards--I am over 25 words--in the tendering and awarding process so that there is more certainty for the person who has been awarded a nursing home licence as well as more certainty and reasons given to a person who has been unsuccessful.

Our discussions today are the end of this long road leading to the formal implementation of the recommendation of the Ombudsman and the committee, i.e., that the tendering and awarding of nursing home licences be tightened up.

Mr. Poirier: Do I read from your explanation that it would be to reduce complications of communications and also hurry the process?

Mr. Bell: We hope both. The bottom line is that when the ministry awards a nursing home licence, everybody involved will know why and to whom it was awarded and what is expected. Is that a fair statement, Mr. Gould and Mr. Campbell?

Mr. Campbell: By way of a partial clarification, when an application for a licence is brought forward, the individual who intends to get into the nursing home activity does not necessarily have facilities available. Part of the awarding of a licence would be contingent upon the building of appropriate facilities during that two-year period. It would be wrong for the ministry to say, "Yes, you have a licence," and then two years later say, "No, you do not." The system worked out with the committee was to ensure that when a proposal is awarded, on the condition that the applicant fulfil the construction requirements, etc., then a licence will be issued. That is documented.

Mr. Philip: I was not elected in 1972 and you will have to refresh my memory. By "new home," you are talking only about what is physically constructed as "a new facility," not the resale from one private home owner to another?

Mr. Campbell: That is correct. The award of a licence.

Mr. Philip: Is it the view of the Ombudsman that the sale of a home would not be covered in this?

Ms. Bohnen: That decision was not considered or contemplated. It was the granting of a new licence for a new or prospective nursing home.

Mr. Philip: In this are we dealing mainly with physical plant types of situation, or are we dealing with staffing and qualifications of staff, etc.?

Mr. Campbell: The construction of the building is the

first stage. Once the building has met ministry requirements, the licence is issued and the operator can go ahead, hire the staff and so on.

Mr. Philip: The Ombudsman was dealing only with the physical plant situation at the time of the recommendation?

Mr. Campbell: The administrative practice adopted by the ministry requires, in each call for proposals, that an undertaking to the successful proposer be included to the effect that he will be granted a licence to operate a home once it has been constructed in accordance with the act and regulations. Primarily, it addresses the construction aspect of it, which takes a number of years, and money is shelled out on the basis of an award.

Mr. Philip: Some concerns have been expressed about the fact that you can have a perfectly well-operated nursing home that is sold to some other party without adequate investigation of the background, the qualifications or the track record of the other party in operating nursing homes.

Mr. Campbell: This recommendation does not deal with that issue.

Mr. Philip: That is what I am trying to--

Mr. Shymko: It is a different ball game altogether.

12 noon

Mr. Bell: The next matter deals with the Ministry of the Environment, particularly the ministry's response to recommendation 2 in your last report. Before we discuss this more specifically, would you turn to tab 1(b)(i), which is near the beginning of your material. It is the second tab in volume 1 of your brief. I have included the relevant pages of the committee's 12th report, that is, the first three pages.

The second group of documentation is a very brief letter from Michael Zacks to myself, dated August 29, which attaches a memorandum of Mr. Zacks to Dr. Hill and others, dated May 14, commenting on what the ministry has done in response to your recommendation. That has attached to it a letter from Deputy Minister Allan Dyer to the committee, dated May 1, 1985, which is intended by the deputy and the ministry to be the response. The issue you have to consider, discuss and decide is whether that response complies with your recommendations.

Just to give you some background, this arose, or came to the Ombudsman, from an individual whose essential complaint was that the ministry did not recognize interest was payable on an outstanding claim made under the Public Works Creditors Payment Act and, second, the person claims--and it is implicit in the first position--he was entitled to such payment.

The Ombudsman made two recommendations. One was that the ministry acknowledge that, in the appropriate circumstances, interest is payable under that act and, second, having accepted

that in principle--I am looking at page 3 of the material, page 26 of the 12th report, the second recommendation, item B--that: "The Minister of the Environment consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay such claim."

In other words, the Ombudsman and you, through this recommendation, wanted the minister to consider whether this person was specifically entitled to an interest payment.

First, let me introduce Mr. Jackson, who is a member of the legal department of the Ministry of the Environment and who, as I understand it, had some direct involvement in the preparation of the deputy's response. Is that correct?

Mr. Jackson: I had no direct involvement in the preparation.

Mr. Bell: Well, he has come here fully briefed and able to assist you. I see who the author was on the top right of the first page of the May 1 letter. Just as further background, the deputy's letter of May 1 was sent to the committee, I am sure, and received on or about its date. You all know the next day there were certain events in the province and the matter was not brought to the specific attention of the committee. Was there a committee at that time? It was not brought to my attention until I and Ms. Madisso met the minister, Mr. Jackson and the executive assistant in August. Until then, I considered the matter had been responded to in an appropriate way, or at least that the Ombudsman's office did not take a position otherwise.

I was quickly informed by Mr. Zacks, on or about the end of August, that this was not the case as far as Dr. Hill was concerned, that their position is as set forth in this May 14 memorandum. So that is where we are.

First and foremost, members, it is your recommendation, so it is for you to consider whether it has been appropriately dealt with. Of course, as in all of these cases, you are interested in hearing what the Ombudsman has to say and what his view is. Again, to complete the background, I received a copy of the letter from the complainant to the Ombudsman, dated September 4, 1985. I received it for the first time this morning and I have taken the liberty of having Todd anonymize at least the identity of the complainant but not anybody else's identity, although there is no new disclosure. I have asked Todd if he would distribute that.

As well, your colleague in the Legislature, the member for Simcoe East (Mr. McLean) is in attendance this morning. Mr. McLean is the member for the complainant's constituency. I am also aware that the complainant is in attendance in the audience today.

I suggest we do it this way. We ask Mr. Jackson first if he can review, with the benefit of the May 1 letter, what the minister did in response to the committee's recommendations and why he believes the response fully implements those recommendations. After that, I will ask Mr. Zacks to elaborate on

his position. I think it is appropriate, Mr. Zacks, that you be the one to reference the complainant's letter of September 4, since it was addressed to you and it is really part of your input rather than input directly to the committee, although the members of the committee certainly now have it before them.

After that, it is open for discussion. Mr. Jackson, could you begin?

Mr. Jackson: I think I can deal with the matter briefly. Mr. Khoorshed of the ministry's legal services branch discussed the matter with the deputy minister after the receipt of the committee's last report. Mr. Khoorshed was given advice on the sort of letter to prepare, which he did, and you have a copy of it. He is not the literal author of that letter. Some words in it were changed after it left his hands. In the meantime, the then Deputy Minister of the Environment had the opportunity to discuss the matter with several ministers. He did discuss it with several ministers and received instructions from the minister of the day to send the letter you now have before you.

I am advised by the then deputy minister's executive assistant that the deputy minister and the ministers considered this matter on the basis that it was within the minister's jurisdiction to pay interest in appropriate circumstances. They had discussed whether interest should be paid in the particular circumstances and then charged back to the municipality or paid as an additional grant by the province. They determined that, in the circumstances, interest should not be paid and, accordingly, the deputy minister sent the letter.

Mr. Bell: Can I again reference that to the recommendations? Recommendation A, I take it, is no longer an issue, if it ever was an issue. The ministry does accept that in appropriate circumstances the crown may pay interest pursuant to a term of a contract with a contractor under that act.

Mr. Jackson: Yes.

Mr. Bell: All right. That is gone. The second is that, from what you have told me and from the detail of the letter, the minister and the deputy take the position that the merits of this person's entitlement to interest were considered.

Mr. Jackson: That is right.

Mr. Bell: As I read the letter, it appears that the reason for deciding that interest was not payable in the circumstances is that there was no privity of contract between the complainant and the ministry.

Mr. Jackson: Yes. That relates to the legal obligation that would arise out of a contract. That was the second.

Mr. Bell: I am sorry. Then there is another reason, which is that it was the minister's view that the person had already accepted in full satisfaction, including interest, an amount of money respecting this claim.

Mr. Jackson: I do not think that is quite accurate. You said he had accepted the amount of money in full satisfaction. Of course, at the time he received the money he was not taking that position.

Mr. Bell: But this is the ministry's position.

Mr. Jackson: He had agreed at an earlier date before the money was paid that he would accept it. But at the time he actually accepted the money and received it, of course, he had changed his position. There was a time delay between the--

I was just concerned that by the way you phrased it you implied the ministry was under the impression at the time the money was actually handed over that the claimant had agreed or was agreeing that he accepted it in full satisfaction and, of course, he did not. He refused to sign a release to that effect.

Mr. Bell: But I want to know what the ministry's position is now, because it is in this letter. Is this part of the ministry's consideration of the merits, that he was paid \$27,000 and change and that this payment was accepted in full payment of the claim, including interest? Is that the position now?

Mr. Jackson: Yes. But I want to make that time distinction. Acceptance was at a different time from payment, and at the time the payment was actually made, of course, [name withheld] was taking the position that this was not what he had agreed to.

Mr. Bell: I think Hansard can delete that name.

So the decision was made on the two essential grounds: no privity of contract and acceptance of a sum including interest. On the first point, if you require privity of contract before you decide that a person is entitled to interest, privity between the crown and the claimant, is the effect of that that only general contractors or contractors with whom the crown subs directly are entitled to an interest claim?

Mr. Jackson: That would be the effect of your assumption, but that is not what the letter says. The letter says there was not privity of contract. It was appropriate for the minister to consider whether there was privity of contract, because if there had been privity of contract, it would have established, presumably, that we were wrong all along and should have paid it right up front as a direct debt of the crown. That is what the second paragraph--

Mr. Bell: I think we just said the same thing.

Mr. Jackson: No. You said that if the Ministry of the Environment required that there be privity of contract, in that case we would only ever pay interest to people with whom we had contracts.

Mr. Bell: Yes.

Mr. Jackson: The ministry does not require that we have privity of contract. It considered the issue of whether there was privity of contract, because, if there had been that privity of contract, then of course we should do it in accordance with the contract rather than with the Public Works Creditors Payment Act.

Mr. Bell: I have been asked to explain the term "privity of contract" and, with my apologies, I presumed that--the term means that there is a direct, legal, contractual relationship between the crown and the person claiming entitlement to, in this case, interest.

Forgive me, sir, I do not understand that position because I read that letter as saying we are not going to pay interest here, or we are not even going to consider paying interest here because there is no contract between the crown and the individual.

Mr. Jackson: That is not what the letter was intended to say and I do not think that is what the letter says. Perhaps the letter could have been better expressed if you are having trouble with it, but it was merely indicating that there was no contractual basis on which to pay interest, and, for that reason, the minister had to consider the issue under the Public Works Creditors Payment Act.

Mr. Bell: Yes.

Mr. Jackson: I think the paragraph is perhaps unnecessary to the letter, but I believe that at the last session of this committee there was some discussion about what the provisions of the minister's contract might have been and the committee did not get into them. However, I think that is probably the reason this paragraph was put in the letter.

Mr. Philip: I am confused now and maybe legal counsel can help us. What is the difference between a contractual obligation to pay the interest and a privity of contract obligation to pay the interest.

Mr. Jackson: They are the same.

Mr. Bell: They are the same. Maybe it is the time of the day or something. If that paragraph that starts with the word "secondly" is now not relevant to a description of the ministry's reasons for not paying it, then do we go back to the second full paragraph to look at the reasons?

Mr. Jackson: Yes.

Mr. Bell: The only reason therefor is that the ministry now takes the position that "the sum of \$27,730.30 was not the amount of Blank's claim for the rental of equipment, etc., but was a specific settlement arrived at before the minister's appointee, Mr. X, and Mr. Blank's legal counsel accepted the amount in full payment of the claim, interest thereon, as well as legal costs." That is it.

Mr. Jackson: That is all I am advised is the reason.

Mr. Bell: All right, so we can forget about privity.

Thank goodness we can forget about privity. So the minister made a finding in his consideration of the merits. The finding he made was that the person accepted this amount of money in full settlement.

Mr. Jackson: I am not sure of the sex of the minister, but yes. You said "he" made.

Mr. Bell: I am sorry.

Mr. Zacks: Susan Fish was the minister at one time.

Mr. Philip: We got the joke.

Mr. Bell: I take it there was no consideration given to the specific contract under which this complainant performed and whether that contract contained, as an express term, entitlement to interest on any arrears.

Mr. Jackson: Are you talking about the general contract under which the complainant performed or the subcontract under which the complainant performed?

Mr. Bell: I am talking about the contract that this person relied upon in making the claim in the first place.

Mr. Jackson: So you are talking about the subcontract between the general contractor and the complainant.

Mr. Bell: Yes.

Mr. Jackson: Yes, that was put before the minister at the time.

Mr. Bell: Does that contract contain an express provision entitling an interest charge on arrears?

Mr. Jackson: I have not read the contract myself, but I did read the transcript of the committee's last meeting and I understand it does.

Mr. Bell: It does?

12:20 p.m.

Mr. Jackson: The subcontract. I only base that on what I read in the committee's last report.

Mr. Bell: The committee was under the impression back then that it did not, but I stand to be corrected.

Interjection: I thought it was an issue that was not resolved.

Mr. Jackson: I may have been referring to the wrong

document. I should have been referring to a briefing document that was prepared for the committee, a synopsis of detailed summary number 10.

Mr. Bell: In any event, before the decision was taken, as communicated through this letter, that contract was considered or, in your words, placed before the deputy or the minister, as the case may be.

Mr. Jackson: I am told the decision was made on the assumption that the subcontract did contain a provision such as that set out in the synopsis that was placed before this committee on a previous occasion. Paragraph 8 of the synopsis of detailed summary number 10 that was placed before the committee discussed interest.

Mr. Bell: Could you read that into the record so we do not have to scramble to last year's brief?

Mr. Jackson: "The complainant's claim for interest charges was based on interest at the rate of one and one half per cent per month or 18 per cent per annum. Interest was claimed from November 1, 1973, to February 29, 1980, on the amount of \$27,730.30. The complainant's calculation of interest resulted in an amount of \$51,596.47 as a result of compounding interest on a yearly basis. Simple interest would amount to \$31,612.52."

I believe it was assumed when the deputy was discussing the matter with the minister that there was a provision in the subcontract. On the following page of the synopsis of detailed summary number 10 at point 4 under the heading Ombudsman's Analysis of Issues, it states:

"The contract between the complainant and the contractor specified that the terms of payment for rented equipment was 30 days net, thereafter interest of one and one half per cent per month on the outstanding balance."

Mr. Bell: That is the information the minister had that led to that conclusion, and, in any event, the minister's position is that, even if interest was specifically provided for in the subcontract, it is not payable in this circumstance.

Mr. Jackson: This was not an appropriate circumstance in which to pay it. That is right.

Mr. Bell: Do you have anything further, Mr. Jackson?

Mr. Jackson: No.

Mr. Bell: I do not have any other questions of Mr. Jackson. Members of the committee may before we turn it over to Mr. Zacks.

Mr. Shymko: Has the ministry discretionary power to award a payment of interest under the act?

Mr. Jackson: Yes. We agreed with that the last time this

matter came before the committee, and the deputy minister in his letter says the ministry has that power.

Mr. Shymko: Even though there was no contractual arrangement between the crown and the claimant, you still have the discretionary power to award them interest?

Mr. Jackson: That is correct.

Mr. Shymko: Was there at any time an official or formal waiving or release of the ministry by the lawyer of the claimant for a claim on interest?

Mr. Jackson: Are you referring to some document in writing?

Mr. Shymko: Yes.

Mr. Jackson: Nobody has pointed out to me any such document.

Mr. Shymko: You referred to a change of opinion by the legal representative for the claimant at a certain stage between the time when the original decision was made for the specific amount and when the money was sent. The lawyer changed his opinion. What is the period of time between the one and the other? A year or two?

Mr. Jackson: I do not know what that period of time is. I was not dealing with it directly at the time. I expect it was a relatively short period of time, but whether it was weeks or months, I do not know. Once the decision was made, we would have wanted to pay the money as quickly as possible.

Mr. Shymko: I wonder whether it is a question of misunderstanding of your interpretation of the legal counsel who originally accepted the specific sum. Why he would change his opinion? Was it simply on his own whim? I cannot understand.

Mr. Jackson: I gather his client might have revoked his authority.

Mr. Shymko: The client may have revoked his legal authority.

Mr. Jackson:--his authority retroactively to the extent that he could do that.

Mr. Shymko: Then we would have to speak to the claimant in a situation like this to find out whether he did. Is that the way the Ombudsman sees that?

Mr. Jackson: We found there was no waiver in our report and that is an issue in contention. It is a question of credibility with regard to the ministry's assessment of the issue. That was one of the matters discussed at great length last year and it appears it is the major or only reason for denying the claimant set out now in the ministry's May 1 letter.

One of the concerns we came to focus on when we were reviewing this May 1 letter from the deputy minister was the entire question of how the merits of the case were considered with regard to fairness to the complainant and properly assessing the issues, particularly when the Ombudsman made a finding of fact that there was no waiver and frankly the ministry takes a very strong position that there was. Surely there ought to have been an appropriate process and fairness extended to the complainant to properly assess and satisfy the minister that there was this type of waiver, notwithstanding what the Ombudsman said.

Mr. Shymko: There is one formal legal document, Mr. Zacks, apparently in the letter of September 4, 1985, from [name withheld] to your attention, where they refer to the fact that there is documented proof in the adjudicator's report that the \$27,730.30 was for the value of their invoices only and did not include interest or legal costs.

Mr. Zacks: That is the complainant's position and that was the Ombudsman's position in the report.

Mr. Shymko: Do you accept that as--

Mr. Zacks: We always have. You are referring to the September 4 letter that has been circulating, this being an appropriate time to refer to it.

This letter was sent to the Ombudsman, to my attention, from the complainant, in response to the letter of May 1, 1985, from the deputy minister to the committee, and a copy of the May 1 letter was sent to the complainant. We sent one as well to ensure the complainant received it. The September 4 letter reflects the complainant's assessment of the position taken by the ministry.

Mr. Shymko: Does the ministry accept the fact that the sum did not include interest or legal costs as formally documented by the adjudicator?

Mr. Jackson: The sum was calculated on the basis of items of claim, which did not include interest and legal costs. It is the position of the Ministry of the Environment that we agreed on that sum in complete settlement of all of the claims, including interest and costs, and that the claimant, through his solicitor, agreed the sum would be a complete payment for all claims.

The mathematics of arriving at that sum did not include any amount for costs or interest.

Mr. Shymko: Was there a signature placed on any document?

Mr. Jackson: No, there was not.

Mr. Shymko: Was this a verbal understanding and a verbal acceptance by the legal counsel?

Mr. Jackson: I understand that is what took place at the adjudication hearing.

Mr. Shymko: So it is a question of establishing credibility here.

12:30 p.m.

Mr. Zacks: Exactly. That is denied by the complainant. As I said, we went into this issue at some great length last year. The issue the committee will have to decide is whether, as Mr. Bell stated, the question of interest was decided on the merits. Our feeling is that it was not.

I am not sure what the appropriate course of action would be if you do agree it was not determined on the merits. The position of the ministry is so firmly entrenched, one has to wonder whether the ministry could do a fair assessment at this point. I throw it out to the committee that it may be appropriate, in dealing with this matter, to refer it to an independent and impartial person outside the ministry to decide the question once and for all.

Mr. Shymko: Our question is not the detail of this but simply whether the ministry considered the merits of that particular complaint. We are being told they did--

Mr. Zacks: You are being told they did and that they did not.

Mr. Shymko: --and we are being told they did not. It is a question of credibility. Somebody is lying.

Mr. Bell: It is a point of information. I will go back to the transcript of last year if necessary.

Mr. Jackson, the two paragraphs you read from last year's synopsis do not say that the contract provided an expressed term for interest. Those two paragraphs gave rise to my question last year. What does the contract say? Mr. Zacks took it under advisement, and I do not believe he came back, because time did not permit, to officially tell the committee whether or not there was an expressed term in that contract.

Mr. Jackson: Paragraph 4 of the synopsis specifically says: "The contract between the complainant and the contractor specify that terms of payment for rented equipment was 30 days net, thereafter interest at 1.5 per cent per month on the outstanding balance."

Mr. Bell: That is what it says, but that issue was not that clear when we discussed this.

Mr. Jackson: I said that when the matter was discussed with the deputy minister. When the ministers and the deputy minister discussed it recently, their discussions were on the assumption that the Ombudsman's factual statement as to what the document said was correct. I have not looked at the subcontract myself. I do not know what the subcontract says.

Mr. Bell: Mr. Zacks, do you remember that exchange we had?

Mr. Zacks: We had a lengthy discussion about whether the reference in the synopsis referred to the actual subcontract or to invoices. My recollection is that at best we could say that provision for payment of interest was in the invoices. It was to be an exercise undertaken to find the actual contract.

I do not believe we actually followed up on that because we had hoped, once the committee's recommendation came out, that the complainant would himself present all this evidence in a proper assessment of the merits of the case. That never happened.

Mr. Bell: For committee members to complete their questions, we do not have a specific examination and consideration of the terms of the subcontract, Mr. Jackson. That is not part of the consideration and the response.

Mr. Jackson: That is right, but when the matter was discussed--

Mr. Bell: I am not saying--

Mr. Jackson: It was assumed--

Mr. Bell: No. I am not saying that in a critical or pejorative way. The committee is entitled to rely on that synopsis, and so is the minister.

Mr. Jackson: If we make the assumption, it does not help. It can only hinder the claimant's position to look at the subcontract.

Mr. McLean: There are a couple of submissions I would like to make. If we go back to the adjudicator's report, it is stated very clearly that submissions were made by counsel and materials were filed. It was conceded by counsel for the minister that the minister had agreed to pay the costs of the rentals that were proved to the adjudicator. Upon the recommendation of the adjudicator, materials were filed and reviewed by representatives of the minister, which made a claim of an unpaid balance of \$27,730.

At that time, it was agreed by counsel for the minister that the representative of the minister, Mr. Wild, upon reviewing the materials filed by the claimant, was satisfied that the amount was fair and reasonable and that the ministry would concede that the amount should be paid under the agreement of the minister.

In reference to the figure of \$27,730, Mr. Wild had said: "The total unpaid balance is accurate and includes no interest charges. The various charges making up item 4, that being the price of rental equipment not returned, are fair, reasonable and the arithmetic is accurate."

We go on to the letter when the agreement was signed. It says in the agreement: "Kindly note that this release protects your claim as to any amounts allegedly owed to you re interest on the aforementioned sum of \$27,730 and for any claim as to legal

costs that you might present at a later date." This was within the agreement when it was signed, because discussion was held with regard to that.

So to be fair, an unbiased adjudicator should be appointed to settle this matter once and for all. I think that is the only way it can be looked at. You have a businessman here who spent many days and months trying to solve a problem that was not of his own making, and it is sad that it has gone on as long as it has. I hope the committee will see fit to refer it to an unbiased adjudicator and settle it once and for all.

Mr. Philip: Mr. McLean makes a lot of sense, and that is the recommendation of the Ombudsman. I would suggest that we have heard enough. We do not want to deal with this matter again. I suggest we go in camera and discuss it and support the Ombudsman's recommendation.

Mr. Shymko: Is the appointment of an adjudicator the recommendation of the Ombudsman?

Mr. Zacks: That would be the only fair way to deal with it at this late date. This matter has been going on not only for months but for years. For well over 10 years, there has been this ongoing dispute, and I think it has to come to an end.

Mr. Bell: In fairness, I think Mr. Jackson should be permitted an opportunity to respond to that recommendation suggested as a course of action.

Mr. Jackson: All I can say is that the evidence that was available was placed before the deputy minister and the minister, including various letters on behalf of the claimant. I think the claimant's position was fairly laid before the minister and the deputy minister.

It may be that the committee will disagree with the conclusion of the minister and think that the claim should be adjudicated again, but I would like it to be on the record that the minister did make a decision with as much evidence as was available that could be placed in front of the minister for purposes of making that decision.

Mr. Bell: Mr. Zacks, I do not mean to presume, but if the deputy had had the contract in front of him and concluded that no interest was payable under that contract, that it was merely an attempt through invoicing to impose an interest charge unilaterally, what would your position be today?

Mr. Zacks: If there was no legal right to claim interest against the subcontract from our complainant--

Mr. Bell: In other words, that interest was then purely a damage claim.

Mr. Zacks: That is right. Well, we would not either. But that was never the issue before us. It was always the issue of a fair assessment of the claim, and that is what we think should

happen. Let the complainant make his best case on a fair assessment of all the evidence he can give and let all issues of credibility be decided by an impartial arbitrator.

Mr. Bell: That is an important issue. You are not saying as part of your recommendation--Mr. McLean can speak for himself--that this complainant should be paid that interest. You are just saying that all the issues contained in his claim for interest should be considered and decided upon.

Mr. Zacks: Exactly. It has never been the Ombudsman's position that interest should be paid, just that all the issues should be fairly determined.

Mr. Philip: If we go into camera, we can decide this in two or three minutes. I realize it means delaying lunch, but why not deal with it now?

The committee continued in camera at 12:40 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
TUESDAY, SEPTEMBER 10, 1985
Afternoon sitting



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Aboud, E., Director, Benefits Policy Branch, Civil Service
Commission

From the Office of the Ombudsman:

Bohnen, L. S., Director, Investigations
Catton, N., Assistant Director, Special Services
Hill, Dr. D. G., Ombudsman

From the Workers' Compensation Board:

Emmink, A., Director of Hearings
McCracken, Dr. W. J., Consultant
Warrington, T. D., Vice-Chairman of Appeals

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, September 10, 1985

The committee resumed at 2:17 p.m. in committee room 2.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: I will call on our counsel.

Mr. Bell: Members of the committee, before we return to the Workers' Compensation Board, the last recommendation-denied case in your materials, would you turn again to volume I, towards the end of the brief, tab 2(viii)2, the section under Ministry of Government Services dealing with a recommendation of both the Ombudsman and the committee which is still outstanding.

To distil the matter, if you will turn to page 7 of that material, you will see some background and explanation in two paragraphs. Essentially, the original recommendation of the Ombudsman, as agreed to by this committee, was that provincial civil servants who retire and take a pension should not have their earnings capped if they return to the public service and obtain employment. Section 16 of the current legislation provides some cap. You recommended, in effect, that section be amended or the provision deleted.

This goes back to 1976, which is even earlier than the last one you talked about. One of the reasons for the substantial time is that, at the ministry's request and with the Ombudsman's concurrence, the committee deferred any consideration of this matter until the task force on pensions had completed and tabled its report and that had been dutiably and appropriately considered by the ministry.

That takes us up to about 12 months ago. The committee met with representatives of the ministry and the Public Service Superannuation Board to find out when this amendment could be expected. As you see on page 7, it was told the government had decided to postpone any decision regarding the amendment on the grounds that the issue was part of a larger one of mandatory retirement under the new Charter of Rights and Freedoms.

As you can see, Mr. George Ashe is quoted. In May 1984, he said, "To look at section 16 of this act in isolation would not be looking on the total issue of mandatory retirement. It has been put aside until that occurs."

The committee said, as indicated on page 8, it was not clear why a projected analysis of mandatory retirement should halt progress of its recommendation and indicated it would pursue the matter with the ministry until the amendment is passed.

That is the background. You will want to know what the current government's position is with regard to the amendment and, if there are no plans to implement same, why not.

Mr. Callahan: Is there any relevance in the recent decision today concerning the argument about judges' retirement contravening the charter? We have that information now.

Mr. Bell: There are a number of pending charter actions brought by employees individually or employee groups intent on setting aside mandatory retirement in a number of sectors. The committee was genuine when it said last year it was not certain how that issue has a bearing on whether, once a person retires, he or she can come back and be re-employed at a salary which is or is not capped. Maybe that is something the representatives from the ministry can share with us.

I guess the answer is that if the mandatory retirement issue is relevant to the committee's recommendation, then yes, recent developments in the courts and otherwise as to mandatory retirement age and its constitutionality are relevant.

Appearing before you from the ministry is Elizabeth Aboud. What is your position with the ministry?

Ms. Aboud: I am the director of the benefits policy branch in the Civil Service Commission, working for the general management board.

Mr. Bell: Ms. Aboud has made available for distribution, and I believe Mr. Decker has already done so, a one-page analysis of one aspect of the issue. I understand she has submissions to make with this document, reporting to the committee what is the current state of affairs. Would you begin, please?

Ms. Aboud: Thank you. I will just take a couple of minutes to give a little background. The Ombudsman's inquiry, of which you are aware, and which took place in 1976, focused on two issues. One was the case of an employee who had retired at the age of 65 in 1967, and nine years later was still employed as a court constable while he was on pension.

The second was an amendment to the federal superannuation act, which permitted full salary plus full pension. The year 1976 was characterized by expanding government employment, double-digit inflation, no Charter of Rights and Freedoms and the fact that the federal government had not realized the full impact of double-dipping, meaning full salary plus full pension.

In 1985 the circumstances have changed. Government employment is no longer expanding. There are serious unemployment problems, especially among the young. The average inflation rate is less than four per cent. The Charter of Rights and Freedoms prohibits age discrimination and, therefore, opens the way for the elimination of mandatory retirement. Therefore, anybody who feels that he can still go on working can go on working without accessing his pension, and the federal government has found that it has great difficulty in preventing double-dipping in the present circumstances.

That is how 1985 is different. I think Mr. Ashe was trying to summarize that sort of thing in saying this was under careful consideration.

On the sheet I have produced, I thought maybe the very best way of defining the problem was to show its impact at various salary levels and at various pension levels. As you may be aware, in the public service superannuation fund, if you have a total of 90 points at the moment, 35 years of service and age 55, you can retire at full unreduced pension, which is thereafter indexed.

I have taken the average salary for our bargaining unit, \$24,000, and then people at higher levels. If you do have 35 years and you have retired at age 55, but wish to continue working, the current law says that if you had a \$50,000 salary and a \$35,000 pension, then you can earn an addition from the public service--it has no effect in any way if you work with the private sector or someone else--for a total of \$50,000. Should section 16 be deleted the total becomes \$85,000.

What we found in the federal government was that people were sitting at their desks one day earning \$40,000 and the next day they had \$65,000 doing the same job but having pension plus salary. What is referred to as double-dipping is currently being referred to the parliamentary committee.

Because government expanded considerably during the early 1970s to the late 1970s, we have many employees with 10 years' service when they reach age 65. In that case, the pension is really very small, but as you can see, allowable earnings would be rather large. Removing section 16 would not help the person with a low pension very much at all, but it does prevent possible abuse, and, I guess, that is the ministry's case.

Mr. Bell: The principle of double-dipping is different to what you have attempted to show with these figures.

Ms. Aboud: No, it is the same. It is a full-time job plus full pension.

Mr. Bell: I have not expressed it correctly. The principle of double-dipping is a principle, if I understand what you are saying, that the federal government is now considering. It is a principle that applies to everybody. Whether in principle a person who has 30 years of pension contributions at the federal level should be permitted to retire and then be rehired to obtain a higher total aggregate earnings for doing the same work, or whether, once that person retires, that position should go to somebody else in the work force or a person about to enter the work force, is one decision.

2:30 p.m.

The other question I thought you had attempted to show by this analysis is that it will only really help the people at the higher end of pension and not the people who decide, for whatever reason, to retire early, and that latter point is more individual

than the former point. What I am trying to say is that if somebody chooses to retire after 10 years of service that is a choice that person makes, and with section 16 deleted, there is the fact that he is only going to be able to add another \$1,874.

Ms. Aboud: No. A person who until now, or until the question of mandatory retirement is settled, which we expect will be settled in February on the basis of no discrimination, has to retire at age 65. He has no choice.

Mr. Callahan: It has been settled. The decision was reported yesterday on the judges. I believe it was anyway.

Mr. Philip: What was the decision?

Mr. Callahan: They said they could not make them retire at age 75 contrary to the Charter of Rights and Freedoms.

Mr. Bell: At age 75.

Mr. Sheppard: I was reading that it depends on when they were appointed judges, whether it was before or after 1975.

Mr. Callahan: I looked at it very quickly. I assumed that it was just a general statement that under the Charter of Rights and Freedoms discrimination because of age was not allowed. I might be wrong.

Mr. Bell: The point is that it is expected that the Supreme Court of Canada will in the not too distant future decide a principle in this country that one cannot be required to retire upon attaining age 65. There is an act that is all near and dear to our hearts. Dr. Hill is probably within that group.

How is that issue relevant to whether or not somebody should be topped up in earnings?

Ms. Aboud: Up until now, a person with 10 years, and that is why we carefully choose the 10 years, of service at age 65 was required to retire. His pension might be pretty low. In this case, even with the current section 16, it could top up to a large amount of earnings.

When mandatory retirement is lifted, as you all anticipate that the Supreme Court will declare it to be unconstitutional, there will be no way to prevent double-dipping. An employee can say the Public Service Superannuation Act says, "At age 55 with 35 years of service, or age 65 with 10 years or more, I can take a pension, but I wish to go on working." You would have the situation as described at the extreme right of number one, which is really a subsidy for continuing to occupy a job at the time of high unemployment. It would be very difficult to justify.

Mr. Bell: I am trying to keep the issue straight. Double-dipping is not relevant to the issue of the Charter of Rights and Freedoms and mandatory retirement.

Ms. Aboud: It is only not relevant because, until the Charter of Rights and Freedoms is deemed to prohibit mandatory retirement, any employer can refuse to employ you after retirement. They will not be able to do that.

Mr. Bell: I know, but let us keep them separate. If the Charter of Rights and Freedoms is held to apply to provincial public servants, there will be fewer people retiring on or about age 65. They will try to get back at a higher rate because the likelihood is that many of them will stay on unless they are induced out by some other means. That is the charter issue. The double-dipping issue is regardless of what age a person retires. You might say it should be against public policy to be able to come back to the same job at a higher rate.

What about this case? These are the facts of Arthur Maloney's case. There was an elderly gentleman who had less than 10 years' service with the public service and who came back, I believe, as one of the commissionaires in the courthouse and earned a salary. His pension was low, but he was capped as per the current section 16. Arthur Maloney reasoned that it was inequitable to someone in those circumstances, when he is back in the work force to survive, to limit the potential he can earn. That is not your guy at \$24,000 with 35 years' experience or \$50,000 with 10.

Ms. Aboud: But he would be the guy who today would earn \$24,000. I looked up his case. I will not mention his name, but he was a liquor board employee.

Mr. Bell: Before he retired.

Ms. Aboud: He retired when he was 65 in 1967, and you will remember that salaries were pretty low then. Then he went to work in the sheriff's court. In those years--that is why I mentioned double-digit inflation--he was in a particular circumstance. He retired at a time when inflation was very low and salaries paid to public servants were very low. He was still working when he was 74. That is when his case came to the attention of Mr. Maloney.

This gentlemen has not worked for many years now. Today, when we are considering amending the act, he would be earning at a different rate. The inflation rate is nowhere near where it was, so the impact would not in any case be the same at all. Even if it were, this person would be 75. If he could not live on his pension now, with the removal of mandatory retirement decided, he would be able to continue working and earning his full salary.

Mr. Bell: Certainly after nine years this committee can take legislative notice of a change in economic and other social circumstances. The bottom line is that you are telling the committee and the Ombudsman that the circumstances behind the Ombudsman's recommendation and the committee's no longer exists and that if you continue to press for the amendment, such an amendment may effect a result that is qualitatively worse than the result that the original recommendation attempted to alleviate. Is that right in a long-winded lawyer's way?

Ms. Aboud: Yes. In this gentlemen's case he would now be able to continue to work if he wanted and was capable of it. Obviously he was capable since he worked for nine more years. I would say that the conditions, which were very much against him at that time, no longer apply.

Mr. Bell: Dr. Hill or anybody, what do you have to say about that?

Ms. Bohnen: We did not know until a few minutes ago that the ministry's position had changed on the merits of the recommendation, and we require some time to consider the Civil Service Commission's current position and respond to it.

Mr. Bell: Subject to what members of the committee have to say and decide, would you include in your consideration inquiries about what the federal government is doing? Again, I do recall when the committee looked at this matter initially that Arthur Maloney did refer to the then recent legislation in Ottawa and he said, "If it is good enough for the feds, it is good enough for the province."

If the feds are taking a second look at it or are already doing things about it, I would certainly like you to have considered what they think and what they are doing before you make your decision. Time does a lot of things. If this is a situation where we have kicked it around for so long that it is no longer appropriate, let us say so and not take up any more of your time and ours.

Dr. Hill: I would reiterate my counsel's position that we require just a little time to take another look at this.

Mr. Bell: Can we impose some deadline on you in that regard so it can be a part of the committee's report?

Dr. Hill: Yes.

Mr. Bell: How is the end of September?

Dr. Hill: That is quite satisfactory.

Mr. Bell: Mr. Chairman, members may have some questions.

2:40 p.m.

Mr. Chairman: Any questions? Any further discussion? Thank you very much, Ms. Aboud.

Mr. Bell: We will return now to the Workers' Compensation Board. Would you turn to Volume II of your material, the last tab in that volume, number 14.

The Chairman remarked to me when we considered that last case that double-dipping is almost as good as what the legal profession has--but that is for another time. Some people say that is gouging.

The committee did deliberate the recommendation-denied case 9 in camera and decided to support the Ombudsman's recommendation. It will be supporting that with its own recommendation in its next report.

We have one remaining item to do, recommendation 9. It deals with an individual who suffered symptoms and problems relating to his back. The issue you have to decide is whether to accept the Ombudsman's recommendation and conclusions. He concluded the back symptoms were contributed to and aggravated by his work. You must decide whether the circumstances come within the board's definition of accidents and within a particular directive that the board follows in its adjudications.

You have a synopsis at the beginning of the material. With that introduction, Dr. Hill, with the assistance of Mrs. Catton, would you tell the committee what this case is about?

Dr. Hill: Mr. Chairman and members of the standing committee, Mr. W. had been a crane operator for about 14 years. In January 1981, he experienced a sudden sharp pain at work. He continued working until March 1981, and then laid off because of back pain until December 1981. There was no specific accident to account for the back disability. However, Dr. A, Mr. W's family physician, and Dr. B, an orthopaedic specialist, were of the opinion that a relationship existed between the nature of the work and the onset of the disabling condition.

This claim has been denied by the board because there was no specific accident in the employment. It is my view that neither the definition of accident in the Workers' Compensation Act, nor the board's own policy on disablement arising out of and in the course of employment, would preclude entitlement. The weight of the medical evidence supports a relationship between Mr. W's work on the crane and the onset of disabling back pain. I would, therefore, urge you to support my recommendation.

Mr. Bell: Mrs. Catton, are you now going to review the specifics of the Ombudsman's investigation, findings and recommendations?

Mrs. Catton: Yes.

Last week, when the board presented its position on systemic problems that Dr. Hill raised in his annual report, there was some discussion of the issue of entitlement to compensation benefits in cases where there was no specific accident. This is specifically known as disablement arising out of and in the course of employment or what are commonly considered wear and tear claims. I would like briefly to review our understanding of the act, the policy and the way in which the board applies the policy before discussing the particulars of Mr. W's claim.

In the Workers' Compensation Act, "accident" includes disablement arising out of and in the course of employment. This section was included in the Workers' Compensation Act in 1963. To assist in the adjudication of claims when there was no specific

accident, the board wrote the following policy:

"Entitlement under the amending act applying to accidents happening on or after April 3, 1963, which includes the definition of 'accident--disablement arising out of and in the course of employment,' requires that the disablement which the employee suffers must have some causal relationship to the work being performed, that is, it is not sufficient that the disablement comes on during work but rather that there must be something about the work which can be considered to have caused the disablement to come on, such as strenuous work, awkward position, unaccustomed strain or even a movement arising out of the work, which is reasonable to consider has caused the disablement."

It is our understanding of this policy that the board could provide entitlement for claims when there was no specific accident. However, we were often confronted with complaints where the board had denied a claim simply because there was no specific accident. As a result of these disagreements, the Ombudsman and the board entered into an agreement on the issue of disablement in 1982. I have given the clerk a copy of the agreement and the accompanying letters to assist you. Specifically, the agreement reads as follows:

"In determining whether personal injury by accident arising out of and in the course of employment is caused to an employee under clause 1(1)(a)(iii) of the Workers' Compensation Act, the board will not deny a claim solely because either the claimant or the board is unable to identify a specific accident, incident or event which the claimant alleges caused the disablement."

The second clause in the agreement which you have before you was excluded by mutual agreement. We go on to point 3:

"The board will not deny a claim solely because the work that the complainant was engaged in was repetitive or performed for an extended period of time, and the board will have regard for the medical opinions in the board file, including medical opinions that the board may see fit to obtain."

By letter of September 1, 1982, Mr. Alexander, chairman of the board, advised the Ombudsman that the board was in agreement with this statement. However, the board indicated that the policy would not necessarily apply to shoulder or spinal injuries. In the board's view, the medical literature was not clear on causation in the absence of specific claims for shoulder or spinal injuries.

In response, the Ombudsman at that time advised the board that the issue as he saw it was evidentiary. In other words, each claim, including claims for shoulder and spinal injuries, should have been determined on the medical evidence before the board. We are therefore left with the following problem:

WCB recognizes claims for a number of injuries, such as knee, wrist or elbow injuries, where there is no specific injury, where there is repetitive movement of that specific joint. It is, however, reluctant to accept claims for back disabilities when there is no specific injury.

In our view, if you have accepted in principle that the board can compensate for any condition which is causally related to the nature of the employment, the part of the body affected would not preclude entitlement.

In this case, we have a complainant who is operating an overhead crane in a steel factory for 14 or 15 years. In the summer of 1980, he felt some pain while gardening. He did not lose any time from work and did not seek any medical attention. He did not feel that this was a significant back condition at that time.

2:50 p.m.

In January 1981, while working, the claimant experienced sharp pain in the lower back. When he saw his doctor about four days after its onset, he complained of the back pain. At that time his doctor advised him it would be an appropriate claim for the Workers' Compensation Board. He continued working and did not lay off until March 1981. At that time, he began physiotherapy treatments on the advice of an orthopaedic surgeon. He remained off work until December 1981. He is therefore claiming about nine months of entitlement from the WCB. He did not register his claim with the board until May 1981.

Because in his opinion the board must compensate workers who have a disability which is causally related to their employment, though not the result of a specific accident, the Ombudsman went directly to a review of the nature of the complainant's work and the medical evidence on point. Specifically, Mr. W operated an overhead crane. There did not appear to be any doubt the machinery in question was old and, according to evidence from co-workers, provided a fairly rough ride, which was also the evidence from the complainant.

The worker brought forward evidence from co-workers also indicating this crane had a particularly problematic brake pedal, which required anybody using it to apply significant pressure. The employer disputed any specific problems with the crane and attempted to refute the evidence of the co-workers.

It is our assessment that, although most of the co-workers attesting to the problem of the crane did not actually operate it on a regular basis, there was sufficient evidence that they had enough experience with it and could compare it to others to attest to the stiff brake pedal.

In addition to this evidence, the appeal board, in its response to both our 19(3) letter and the Ombudsman's report, stated it did not dispute there was some mechanical and operational difficulties with crane number 113. The board went on to indicate that, although there may have been problems with the crane, this would not have been unusual for Mr. W. Therefore, in our opinion, we are left with evidence which suggests the complainant was operating a rough-riding piece of machinery which would have subjected him to jarring and bumping during the course of his employment.

To turn to the medical evidence in this case, I first referred to the opinion of Dr. A, the complainant's treating family physician. In a report of June 1982, Dr. A stated, "I told the complainant that I felt his back pain was caused and aggravated by his work and suggested he start a WCB claim." In a later report, Dr. A stated: "There are no ifs, ands or buts here. His work caused his symptoms and problems, first documented by me in January 1981."

Dr. B, the orthopaedic surgeon who treated the complainant, indicated in a report of September 1983, addressed to our office: "As well, I gather from talking to the patient that this particular crane had been noted to be a rough-riding, jarring type of crane, and I would think this would likely, in a back that is prone to flare-ups of muscle spasm, be a very aggravating factor and would likely precipitate bouts of back pain and be poorly tolerated."

In contrast to these supportive opinions, the WCB section medical adviser stated, and this is his complete report: "The injured employee has degenerative disc disease at L5-S1. However, no work-related incident occurred to cause aggravation of this condition."

Therefore, in our view, we have two medical opinions which support a relationship between the nature of the work and the disability. The opinion of the Workers' Compensation Board doctor is dependent on the fact there was no specific injury to have caused an aggravation of his condition. We therefore feel the weight of medical evidence supports a relationship between an aggravation of his pre-existing condition, diagnosed as degenerative disc disease, and the work he was performing. On this basis, the Ombudsman found the WCB decision was unreasonable and recommended payment to the complainant. That is the basis of the case.

There are two problems the board raised during our investigation I would like to deal with now. First, the board questioned the validity of the family physician Dr. A's opinion because, as it characterizes him, he was hardly impartial. There is no doubt there is no love lost between this doctor and the WCB. That does not necessarily negate the quality of his medical opinion. In our view, his medical opinion should stand.

There is also a concern on the part of the board about the worker's delay in reporting the claim. Clearly both doctors in this case feel that the worker was very honest and had a great deal of integrity. He felt, to begin with, that his disability would not be prolonged and so he went on sickness and accident benefits provided by the company.

The other position that the doctors have enunciated for him is that cases of this nature have a long duration and it is much quicker to get sickness and accident benefits, so he proceeded by that route rather than be without an income.

The facts of this case support the position that these claims take a long time to adjudicate. His accident was in 1981.

It is now September 1985, and he has never received any money from the WCB.

Mr. Bell: Mrs. Catton, before questions, you had distributed some additional material this afternoon, an exchange of correspondence between Mr. Morand when he was Ombudsman and Mr. Alexander when he was chairman. What is the relevance of the material to the Ombudsman's recommendation in this case?

Mrs. Catton: That is simply our position and our agreement on the whole question of disablement arising out of the course of employment. That was the original agreement and the two letters, one from Mr. Alexander and one from Mr. Morand, go on to qualify that agreement, but the agreement still stands.

Mr. Bell: Are you saying that when you measure the circumstances of this case against that agreement, it should come out for entitlement?

Mrs. Catton: Yes.

Mr. Bell: Do you want to explain more specifically why? You should give the committee members some more background to that exchange and agreement because, with perhaps two exceptions, none of them was previously aware of it.

Mrs. Catton: I did that briefly, but specifically, if you note the last part of the agreement, it says the board will have regard for the medical opinion, including the medical opinions that the board sees fit on the file. In this case we have three medical opinions. Two support the claimant; one does not really address the issue, because the doctor was looking for a specific accident.

Mr. Philip: Refresh my memory on this. Is this a unionized company?

Mrs. Catton: Yes, it is.

Mr. Philip: Would the union not have not have advised the worker immediately that he should protect himself by filing a claim with the WCB while at the same time filing for sick benefits?

Mrs. Catton: There is no indication in the file that the complainant ever approached the union for assistance. The claimant in this case, you should recognize, was employed by this company for 23 years before the onset of this disability. He never lost a day's work in those 23 years and was reluctant to file for workers' compensation in the first place.

Mr. Philip: So he would more than likely have taken the advice of the personnel officer, who would have suggested that he go on sick benefits.

Mrs. Catton: I do not know whether anybody actually gave him advice. He also was under the impression, and it is clear in the transcripts of both the appeal board and the appeals adjudicator hearing, that to get workers' compensation you had to

have had an accident. He visualized an accident as blood or falling down. He said, "Without blood, how could you say I had an accident?" He did not understand the Weiler concept of accident in terms of the Workers' Compensation Act.

Mr. Philip: Is it your experience--I know it has been mine--that it is very difficult to get the board to accept something where you do not have this individual incident that you can point to? What is the experience of the Ombudsman? Are large numbers of these cases coming up? Are they filtering all the way through in spite of the agreement between the Ombudsman and the board?

Mrs. Catton: The problem continues with back injuries and shoulder injuries. It is not difficult for a tile setter to get compensation for bad knees or a man who is laying rugs, who uses a kicker to stretch the carpet, to get entitlement, but for spinal injuries there certainly appears to be some reluctance on the part of the board to grant entitlement.

3 p.m.

Mr. Philip: Can you put any numbers on this?

Mrs. Catton: No, I am sorry. I cannot.

Mr. Bell: I would like to ask Mr. Emmink or Mr. Warrington, with whatever material you think is relevant and appropriate, to explain the board's position.

Mr. Emmink: I think the board's position is stated fully and completely in the chairman's letter of June 28 to Dr. Hill.

Mr. Bell: Can you pause? That is at page 17 of the material. That is Mr. Alexander's response to Dr. Hill's tentative report with tentative recommendations?

Mr. Emmink: That is correct, yes.

Mr. Bell: Okay.

Mr. Emmink: If there is anything I can add to that to clarify it, I would be happy to do so.

Mr. Bell: Can you save us some time? Can you give us a distillation of what he says in that letter?

Mr. Emmink: No. I think the letter has to be taken in its entirety. To try to distil it would be to detract something from that, and I would be reluctant to do so. If you like, I can read it into the record.

Mr. Bell: No, I do not think we need to do that. Does the letter say anything that his March 20, 1985, letter, on page 33, does not say?

Mr. Emmink: March 20, 1985?

Mr. Bell: His response to Dr. Hill's report. Page 33.

Mr. Emmink: It says quite a bit more than that letter.

Mr. Bell: Give me the bottom line. Does it say more?

Mr. Emmink: Yes. The June 28 letter is really a detailed response to each of the submissions made by the Ombudsman. It explains and identifies some of the evidence on the board's file, particularly that evidence obtained first hand from the complainant, that played a part in the board's deliberations. It refers to some of the medical evidence and the reasons the board, although having regard for the medical evidence, did not accept it for the purpose of determining there was a causal relationship.

Mr. Bell: Mrs. Catton and Dr. Hill relied on, in some manner, the so-called agreement on subclause 1(1)(a)(iii) of the act that Mr. Morand and Mr. Alexander reached in 1982. You heard her say the position is that the facts of this case come within that agreement. What does the board say about that?

Mr. Emmink: I agree. The board did have regard for the medical evidence.

Mr. Bell: What about the other three?

Mr. Emmink: I do not believe the first part applied.

Mr. Bell: So it is not relevant.

Mr. Emmink: Not in the board's view.

Mr. Bell: Can I look at Mr. Alexander's March 1985 letter before we decide how much to go back into the specific evidence. On page 33, third paragraph, second sentence, Mr. Alexander says: "The board is satisfied that, in order to be considered compensable under subclause 1(1)(a)(iii) of the Workers' Compensation Act, the onset of a back disability must be associated with something unusual or strenuous which can reasonably be considered as the cause of the disability. While reference has been made to a stiff brake pedal and to the bumping and jarring movement of the crane as being factors of some significance, in the context of the complainant's employment, these factors were not unusual."

What Mr. Alexander appears to have done in that paragraph is to paraphrase directive 2. Would you agree?

Mr. Emmink: Yes, to an extent.

Mr. Bell: By that answer, I think you have anticipated what I am going to ask. It appears that he describes the board's decision on the basis that the factors were not unusual.

Mr. Emmink: Unusually strenuous.

Mr. Bell: I am just reading the last sentence.

Mr. Emmink: The last sentence of what?

Mr. Bell: Of the paragraph we just looked at.

Mr. Emmink: Yes, these factors being the strenuousness or awkwardness were not unusual.

Mr. Bell: Again, I am looking at the paragraph and I see the words "unusual or strenuous" in the second sentence and I see only the word "unusual" in the third sentence.

Mr. Emmink: Yes.

Mr. Bell: He appears to be describing that as the basis of the board's decision.

Mr. Emmink: I suppose you can draw that inference, but that is not correct. It has to be unusually strenuous or awkward.

Mr. Bell: Let us look at the directive. Members, turn to page 29 of the material, which is page 5 of Dr. Hill's report. He sets out, halfway down the page, the directive we are concerned with. About seven lines down, the directive speaks of the factors that must be present when it says, "There must be something about the work that would be considered to have caused the disablement to come on, such as strenuous work." Let us just stop there.

Mr. Alexander in his letter does speak to strenuous. Correct?

Mr. Emmink: Yes.

Mr. Bell: The previous response the board refers to and relies upon, not only medical opinions but also certain evidence which it believes supports a finding that nothing about the work was strenuous.

Mr. Emmink: What do you mean, the previous response?

Mr. Bell: The 19(3) response.

Mr. Emmink: Yes. Okay.

Mr. Bell: That is a factual issue.

Mr. Emmink: That is correct.

Mr. Bell: The directive then goes on to say, after "such as strenuous work," "awkward position". I do not see anything in Mr. Alexander's response that deals with awkward position. What does the board say about that?

Mr. Emmink: I do not believe there was an awkward position.

Mr. Bell: "Unaccustomed strain." That does not appear to have been considered by the board.

Mr. Emmink: That is right.

Mr. Bell: What do you say about that?

Mr. Emmink: I do not think there was any unaccustomed strain.

Mr. Bell: How about the last, "Movement arising out of the work which is reasonable to consider has caused the disablement"?

Mr. Emmink: Such a movement has not been identified to us.

Mr. Bell: Dr. Hill has identified some. "Application of brakes in the manner described."

Mr. Emmink: Which one was it? Which movement?

Mr. Bell: He looks at this agreement that Mrs. Catton has just reminded us of and says, "I do not have to show you one movement." That is how the committee has understood that agreement to be workable, to say, "We are not going to disentitle because the complainant or the Ombudsman cannot refer to one specific movement, either unusual, awkward or strenuous, or otherwise."

Mr. Emmink: That agreement should really be read in the context of the chairman's letter of September 1, 1982, to Dr. Hill; how it explains it.

Mr. Bell: Why? Why can the committee not look at the agreement itself?

Mrs. Catton: For clarification, these two letters, the letter from the chairman and the one from the Ombudsman at that time, agreed to delete that section 2. I explained that.

3:10 p.m.

Mr. Bell: Sorry. That is when I was out.

The board's position is quite simply, because the complainant is not able to identify one specific bump, one specific jar or one specific movement as causing the symptoms, the board will not recognize this claim.

Mr. Emmink: No. We are saying for this complainant there was nothing strenuous, nothing awkward about the work which would reasonably have led to the disablement.

Mr. Bell: How is that different from what I just said?

Mr. Emmink: I think you said even a movement or anything.

Mr. Bell: No, I said, because the complainant could not identify within the language of the directive one specific incident--

Mr. Emmink: That is right.

Mr. Bell: In general terms--

Mr. Emmink: For back injuries, for spinal problems, and to an extent for shoulder problems, there has to be something unusual. There has to be the element of having exceeded the physiological norm.

Mr. Baetz: Is there anything on record to describe more fully this "mean machine" that this man was operating over the years? Is there some description by his fellow employees? How long was he on the machine? Was that the only machine that was in use, and was this the only claim against it? What was it, a Caterpillar?

Mr. Emmink: I can provide a detailed description of the machine as provided by the employer who checked out this machine at a point after this claim arose. If you wish, I can read that.

Mr. Baetz: Is there anything on record as to how this man's fellow workers felt about it? Did they describe this as a rough job?

Mr. Emmink: I can provide you with the information given by witnesses. I can also provide you with the employer's comments on those witnesses' statements. The statements of the witnesses-- ,

Mr. Baetz: Maybe it is in here. Maybe I should have read it, but I did not get a chance to.

Mr. Emmink: We have a number of them. I will delete the names.

"I, Mr. Blank, a senior crane operator for over 15 years on crane 113, have complained to the foreman and the superintendent as to the conditions of operating the bridge (plucking). Due to this condition the foot brake must be used more often and with greater force. This has resulted in discomfort in my left leg and back. My family doctor knows of my back problems and has medical records."

The board does not dispute that the brake pedal was stiff. This was subsequently determined by the employer as well. What we do have a problem with is the claim that this crane was an unusually rough, bumpy, jarry type of machine. That was not conclusively established to the board's satisfaction. I can go through the rest of the witness statements. The witness statements make reference--

Mr. Baetz: The witnesses being his fellow employees who knew him and knew the machine?

Mr. Emmink: Yes, they are his fellow employees. They had also on occasion used this crane.

Mr. Henderson: They knew of the injury at the time they were making these statements? They had not independently complained of the crane?

Mr. Emmink: They came forward, I suppose, as a result of

the investigation that was done.

Mr. Henderson: Is it fair to say they may have come forward partly to help a colleague?

Mr. Emmink: I suppose that is a factor. This man was apparently well regarded by his co-workers.

Mrs. Catton: To clarify that, most of the statements from the six or seven co-workers indicated that at one time or another they had complained to the foreman about the condition of the brake pedal in the crane. The foreman, in his letter to the Workers' Compensation Board, acknowledged, "I have had one of the senior operators at 113 complain about this condition--that it is too difficult to operate the brake."

He goes on to say that no one has ever complained that this is a source of back pain. In fact, it is very evident they complained independently of this situation about the condition of the crane. The company does not acknowledge that anybody complained except for this one senior crane operator.

Mr. Henderson: You are sitting down when you put the--

Mr. Emmink: Yes.

Mrs. Catton: You could be standing also.

Mr. Emmink: You have the option, whichever is more comfortable. The consensus of opinions from the witnesses seems to be that there was a stiff brake pedal and the board does not contest that. We accept that, but how you get from a stiff brake pedal to a back problem has not been addressed medically.

Mrs. Catton: There is also evidence from one of the co-workers that: "As well, I feel the uneven floor in the crane has resulted in back problems. Till today, nothing has been done to improve the floor condition of the crane."

In addition to that there is evidence from the orthopaedic specialist that the complainant would have been in an awkward position while operating the crane. He would have been in a stooped position sometimes when he was sitting down. On other occasions, especially when it was cold, he would have to lean outside the window of the cab to make sure he did not hit anything while lifting things. There would be a lot of movement at that time.

Mr. Emmink: Mr. Chairman, could I read into the record the employer's investigation of his crane and his description of how a person uses the levers and pedal? It might help the committee to visualize this.

Mr. Bell: Is it part of the material the Ombudsman considered?

Mr. Emmink: Yes. It is part of the board's file.

"Crane 113 runs in a north-south aisle, 105 feet wide, approximately 400 feet long, and is normally occupied in charging ten-ton coils of steel to number 3 Pickle line entry end. Coils are either picked up and stocked for charging or charged directly to the unit. This crane operates within a 250-foot distance 98 per cent of the time and in a normal eight-hour period would handle 60 to 80 coils, sometimes twice. During this same normal eight-hour period number 113 crane would also remove scrap, using an electromagnet, two to four times per eight hours.

"In all operating instances mentioned above, the crane can be operated very comfortably from a sitting position, with the crane controls at a comfortable arm's length (elbows at the sides of the abdomen). All bridge, hoist and trolley control levers are quite easy to operate. The control levers move with very little effort.

"There is no bouncing or jolting involved in the operation of this crane, and the crane rails are and have been in good condition. Occasionally this crane is required to assist in repair work, either during operating shifts or during regularly scheduled maintenance turns. Delays on number 3 Pickle line average 13 per cent of operating hours and this crane would be involved in 5 to 6 per cent of them. Maintenance turns are each Thursday during the 7 to 3 shift, and the crane work load would be approximately 40 to 50 per cent of the eight-hour shift.

"During periods of repair, assistance or maintenance work, the operator could, depending on his individual style, be required to stand for a period of time during the repair, in order to gain a view of the work area below him. Occasionally, the operator may have to lean forward out of the cab for vision. In order to operate this crane, the operator must walk up 53 stairs." Somewhere else in the file I recall seeing it is not 53, but 72, but in any event: "He would normally do this twice per shift, a total of twice up and twice down."

With regard to the brake pedal, they say: "There is one other item I should mention about the operation of this crane. The foot brake is used often by the operator and is a little stiff. The foot brake is used to aid in stopping the crane bridge travel and is depressed by the operator's left foot.

"I have had one of the other senior operators of 113 crane complain about this condition (that it is too difficult to operate the brake) but never has this individual told me that this is a source of any back soreness. Mr. Blank has not complained to me about the operation of the foot brake."--Mr. Blank is the complainant--"I know of no other workers who have been similarly affected." That is, similarly affected to the complainant.

Mrs. Catton: Just to give a sense of balance, I would like to read into the record the employee's description of the operation of the crane. This was the evidence presented at the appeals adjudicator hearing before the Workers' Compensation Board.

3:20 p.m.

"Question: Can you tell us about this faulty brake? What is faulty about it?

"Answer: The faulty brake is very stiff and you have to press all the time with your left foot very hard.

"Question: Could you compare it to other cranes or have you operated other cranes?

"Answer: On other cranes I don't have to operate too many times. I was learning on crane 113. That's why I don't know the difference.

"Question: What you are saying is the brake is faulty. Can you give us a little bit more explanation why it's faulty? You know you've got a brake in a car. You've got a brake in a snowmobile and brakes on-- What is faulty about it? What is stiff? Can you explain it in more detail?

"Answer: Yes, the brake is stiff and special when you have to press on them. Every lift you do, every movement you do, what you do, you need all the time the brakes to control the crane.

"Question: How many times a day would you have to press the brake roughly? Three, four, five times?

"Answer: Over 100 times.

"Question: Are you always sitting or are you standing operating this crane?

"Answer: Half I standing, half I sitting on the crane.

"Question: Could you show us either, here on the table? Could you--could we-- You go out there where we could see you?

"Answer: Yes.

"Question: Could you show us how it works?

"Answer: My brakes I have to operate with my left foot. I have to press more often with the side and to all my strength.

"Question: What happened when you pressed the foot?

"Answer: It's very very stiff and very hard.

"Question: Are you saying--and I want you to clearly understand it--are you saying you have to use extra physical force?

"Answer: Yes, you have to use more strength.

"Question: What about the floor of the crane?

"Answer: The floor of the crane is not straight. It's uneven.

"Question: Would this cause your body to be in an awkward position while standing.

"Answer: Yes. You don't stand right.

"Question: What about the drive mechanism of the crane?

"Answer: The crane is on the runway. I'm quite sure the adjudicator, when he was on the road, and that, has seen a crane.

"Question: Is it a smooth-riding crane or bumpy-riding crane?

"Answer: The crane where I drive 113 is very old and very bumpy. It's not smooth at all.

"Question: When you're standing, could you show us the position where your left foot would be in relation to your right foot in relation to your lower trunk?

"Answer: Yes, I standing most time. This way I operate on the brakes.

"Question: Where are your hands?

"Answer: My hands are on the control.

"Question: Where is your head?

"Answer: My head is, well, I looking out, I have to look where my railcar area is. I have to look all over really.

"Question: Are you looking through a window?

"Answer: I look through a window. Sometimes is glass, cold, especially when is cold. Sometimes we have to open window. We have to look out the window and to see what we have to do.

"Question: When you are making a lift, how much weight would be a lift roughly?

"Answer: About 10 tons or maybe more.

"Question: When 10 tons is being elevated by the crane's mechanism, does it cause the crane cab to do anything or the brakes to do anything?

"Answer: Yes, it bounces with the weight. It's bouncing all the time.

"Question: What's bouncing--the weight of the crane cab or the bridge?

"Answer: Bouncing the whole cab, the bridge.

"Question: Can you describe the bounce?

"Answer: It's a--you know there's a bounce when you're in a car and you hit a rut.

"Question: Is it a steady bounce, when you have got a bad

spring in a car, or is a gentle bounce? What kind of bounce do you have?

"Answer: It's a very hard bounce, specially it bounces to from the rails."

That is basically his description of--

Mr. Bell: Is this an examination with somebody in your office.

Mrs. Catton: No, this is the hearing before the board, the second letter of appeal.

Mr. Philip: Why would he would only have to use the left foot? Is the brake not in front of the controls, or in front of the levers?

Mrs. Catton: I do not know. I assume that is how he brakes. I have never been in a crane.

Mr. Chairman: Mr. Henderson is next. Have you concluded, Mr. Baetz?

Mr. Baetz: For now, yes.

Mr. Chairman: Dr. Henderson, Mr. Hayes, Mr. Sheppard, Mr. Morin and Mr. Pierce.

Mr. Henderson: Is the position of the Board--

Interjection

Mr. Henderson: Mr. Philip keeps pointing out that that is not the nature of my occupation, that I do not consider it relevant either.

Is the position of the Board that the stiff brake pedal and the bumping and jarring of the crane did not fall into the category of being something about the work which can be considered to have caused the onset of the disablement or is it the board's position that maybe it did, but that kind of cause and effect relationship does not make it compensable. It is also the board's position that, because there was degenerative disc disease anyway, bumping and jarring is not the factor in deciding whether it is compensable.

Mr. Emmink: It is sort of a combination of all three. The board's position is that here we have a man with underlying degenerative disc disease which first became symptomatic in a noncompensable context, that is, when he was gardening in the summer of 1980. Since that incident, according to evidence he himself gave, he continued to have periodic episodes of back pain which he would treat with a heating pad, aspirins or whatever and it would go away in a few days.

Then came the exacerbation of pain in January 1981, which happened to occur while he was at work. The board is of the view

that fact does not make it compensable, it is rather a natural progression of his degenerative disc disease. There is nothing about the circumstances under which that pain recurred to lead the board to the conclusion it was an employment accident.

Mr. Henderson: Suppose we come at it from the other direction: If a physician who saw the complainant before all this occurred had known he had degenerative disc disease because he had found X-ray evidence of it or something, and then found out he was a crane operator and heard the crane had a stiff brake pedal and did a lot of bumping and jarring and so on, would not most physicians, anyway, say: "For goodness sake, you had better change jobs," or, "That is going to aggravate your degenerative disc disease?"

A physician might not say: "Stop gardening." He might say: "Be careful of the way you garden," or, "Don't lift sacks of potatoes" or something, but would not most physicians say: "That crane you are operating is going to get you into trouble if you have degenerative disc disease," from everything I have heard about the nature of the crane?

Mr. Emmink: I do not know if the nature of his job was really brought home to his doctors until well after the event.

Mr. Henderson: I realize that. I am just asking it as a hypothetical question around the cause and effect business.

Mr. Emmink: I am not a doctor myself. What you are saying makes sense. If a doctor is aware he has degenerative disc disease and it has advanced to a certain stage at which it is likely to become symptomatic rather easily, he may have some general advice with respect to back strengthening exercises to protect the vulnerable discs or some other procedures.

Mr. Henderson: I think that is true, but apparently the question here is whether there is something about the work which can be considered to have caused the disablement to come on. I am just wondering if we can remove it slightly from context in order to get a better fix on it. Most physicians would say: "That crane is likely to cause some of your symptoms to come on." It seems to me some physicians might give that advice.

Mr. Emmink: Traditionally, when we have looked at this type of thing we have looked for something--had there been a very sudden, sharp jar, immediately followed by a sudden onset of pain, then we would look at it as being an aggravation of an underlying condition.

I know the Ombudsman has alluded to there being a sudden sharp pain, but it seems to me this was a version that came to light well after the fact. If we go to the worker's original report of accident, there is really no mention of that on the form.

Again, I can read it into the record for the committee's information. He talks about having visited the doctor for a yearly company checkup and mentioning that at the end of each shift his back caused him pain and the doctor examined him. In other words,

there wasn't anything specific. He was complaining to the doctor about noticing gradually increasing pain over a period.

3:30 p.m.

Mr. Henderson: Let me ask this question then. It seems to me that with these kinds of back injuries that involve aggravation of degenerative disc disease, there is a progression in steps and on the occasion of something that aggravates or causes minor injury--not minor in an overall sense but minor steps in the progression of the injury--on the occasion of any one of those episodes there may or may not be a sudden experience of pain. You may get suddenly a jar and a real flood of pain but you may not. You may get exacerbation of some process of pathology in the back but later on--a few hours or a few days later--you get muscle spasm and tissue reaction and that is when the pain really starts. It is analogous in a way to the experience most of us have had of wrenching your back when you are doing something and you notice it or you may not, but a day or two later all of a sudden you cannot move.

I do not know whether it is necessary that he would have experienced a sudden flush of pain or whether it is more relevant that there was something in jerking. From the sound of it, the crane was jerking him around an awful lot.

Mr. Emmink: The important point is that if it was jerking around a lot, it had been jerking him around for 14 or 15 years and that for him, this was not unusual. He was accustomed to it. It is like the construction worker who is used to slugging bricks or carting a heavy wheelbarrow. If that I did that for a day I would be in agony but that fellow is accustomed to it. He has been exercising those muscles for years.

Mr. Bell: --may help Dr. Henderson because that last example puts the issue. I am not sure all the committee members have all that before them. When directive 2 speaks of unusual, awkward--something about the work--there are two contexts of unusual or awkward. It is unusual in a general way for the average person and there is the context of being unusual in the specific job.

The board's policy is that when it examines these cases to determine whether to allow grant entitlement, it looks at the job and its specific activities and has to find something else, something unusual or awkward. Probably the best word is something different than the usual activities.

An example we have used before--I know Dr. McCracken likes the example and I will change it from Dave Stieb to Jim Clancy because he just came off tendonitis--if Jim Clancy was a scheduled employee under the act and he was disabled because of pain in his right throwing shoulder, the board would not grant entitlement to him if it determined that the usual pitching motion, which everybody acknowledges is a motion that is unusual or awkward to the normal arm, that if it was caused solely by his usual pitching motion--isn't that correct?

Mr. Emmink: I have to be guided by Dr. McCracken shaking his head.

Mr. Bell: I thought last year you said Dave Stieb's normal pitching motion would never result in a symptom that was covered.

Mr. Emmink: What we said there, and again Dr. McCracken can correct me, is that the pitching motion is an example of where the body is exceeding the physiological norm. Is that correct?

Dr. McCracken: This is essentially what I was going to say. I do not have Hansard in front of me from last year but it is my recollection that when we were talking about baseball pitcher's elbow, I was using that as an example of when a joint exceeds normal physiological limits. In other words, the stresses that we know are applied to a baseball pitcher's elbow are such that, in a certain number of pitchers, as they continue to pitch ball and exceed their physiological limit, a time comes when an injury occurs. The definition of injury is where there is tissue deformation which becomes permanent.

Mr. Bell: Given that circumstance, if anyone who has had elbow reconstruction was a scheduled employee under the act, would he receive compensation for that injury?

Dr. McCracken: I would deem that to be the same as the claims the board allows for tendinitis, tenosynovitis, and for people who are doing repetitive types of work with power screwdrivers, drills and things like that. I believe we allow something like 300 or 400 cases of that type per year.

Mr. Bell: So is it correct there are some movements the board considers to be so unusual, so foreign to the average body movements, that if injury occurs and can be identified, compensation will follow?

Dr. McCracken: Yes.

Mr. Bell: There are other movements, I take it, where the board has said those movements are not unusual or totally foreign to the human body in respect of which it will not allow compensation. Those, I take it, include being jarred up and down in a crane, if one is jarred up and down in a crane, or applying a stiff brake pedal in a crane with or without a full load going up or down.

Mr. Emmink: In this individual, that was not unusual.

Mr. Bell: Would the circumstances Dr. Hill has found about the person's job performance and activities be compensable to anybody operating a crane?

Mr. Emmink: Yes. For instance, it would apply to a supervisor in the office who sat behind a desk all day and because of a labour dispute had to operate that crane.

Mr. Bell: That is an easy one; that is not that person's job.

Mr. Emmink: That is right.

Mr. Bell: But can any crane operator in this province, as far as the board is concerned, qualify in these circumstances? Can he receive entitlement for an alleged back or any other type of "injury" as a result of being jarred up and down in a crane, or applying a stiff brake pedal, in the circumstances that Dr. Hill believes?

Mr. Emmink: I am not going to answer that because I do not know how to. You are asking me to make a generalized statement when we are required by the act to consider each case on its individual merits.

Mr. Bell: I thought you told me in your earlier answer it does not consider that any crane operator who is jarred up and down in a crane, or applies a stiff brake pedal, would ever be considered.

Mr. Emmink: That is, barring any unusual elements in the hypothetical case. If there was nothing else but the circumstances you describe, then I would say no. For there to be a jar or a bump that is compensable, it has to be a different jar or bump than the person usually experiences. For there to be an application of a stiff brake pedal, it would have to be an unusual application of that stiff brake pedal; unusual from what he usually does.

Mr. Bell: For a back?

Mr. Emmink: I am not sure how a stiff brake pedal relates to a back.

Mr. Bell: I am not an orthopod either but I know lots of them who will say that application and that movement has the potential for all sorts of things. I am not sure that is relevant. I want to know so that committee members can understand your context of an unusual operation.

Mr. Henderson: Let us leave out Clancy and think of a boxer. Nobody would argue that, since it is in the line of his usual occupation to get blows on the head, if he got a blow on the head that killed him or disabled him the disability would not be attributable to his occupation. Would it not?

Mr. Emmink: That represents exceeding physiological limits, Dr. Henderson.

Dr. McCracken: In other words, you are getting permanent tissue deformity in the form of haemorrhage into the brain.

Mr. Henderson: Is that not the question we are talking about? What is different about this guy is that he had degenerative disc disease. It is like a boxer who had an aneurism to start with but, as I understand it, it would not affect the way the board considers it.

3:40 p.m.

Dr. McCracken: Dr. Henderson, I think you have introduced another figure in the equation when you mention berry aneurysm, because there we are dealing with a pre-existing condition, not necessarily a disability. The question that would have to be answered in that hypothetical case is, "Was the blow sufficient and was it of a correct physical nature that it could be construed that the blow caused sufficient change of internal cranial pressure to be the final factor to rupture the pre-existing berry aneurysm?" It is very complicated.

Mr. Henderson: Is that not exactly the question we are asking here? Did not the jarring and bumping of the crane and the stiff brake pedal, given that he had degenerative disc disease, constitute something about the work which aggravated the pre-existing pathology such as to cause disability?

Dr. McCracken: Yes, in that context from a medical standpoint, the decision made when the board physician looked at the case at the request of the claims adjudicator was that the environment of the crane operator, the crane cab in the course of his work, did not exceed physiological limits. In other words the vibration, if there was vibration, and the pressure he was exerting on the brake pedal were such that they did not amount to exceeding those limits where one would expect tissue deformity to occur on a permanent basis.

Mr. Henderson: Given that he had degenerative disc disease.

Mrs. Catton: May I ask a question for clarification? Could you tell me where the section medical officer said that?

Dr. McCracken: It is in the file. He said he was unable to establish any cause-and-effect relationship. In effect, that is the basis of establishing a cause-and-effect relationship.

Mrs. Catton: Did he not say he could not identify a specific accident?

Mr. Emmink: Yes. He said no work-related incident occurred to cause aggravation of this condition.

Mr. Henderson: Surely the physiological limits become very different if you have degenerative disc disease than if you do not.

Dr. McCracken: You still have to have tissue deformity.

Mr. Philip: Did the board's medical officer who made that decision ride on the crane to examine whether or not the vibrations were insignificant?

Dr. McCracken: I cannot answer that.

Mr. Philip: I find it hard to know how he can come to those conclusions without even visiting the site.

Mr. Emmink: Neither did the attending doctor nor the specialist.

Mr. Hayes: I have ridden these cranes. I know a crane in so-called good working order has a lot of bumping and jarring. This indicates they were lifting 10 tons. When you lift 10 tons, you do get jarred somewhat from the lift. There is a lot of repetitive motion. I do not really know how you can say this crane was--I think you mentioned the word "comfortable." I have not yet seen one of those overhead cranes that was comfortable.

Mr. Emmink: Those were the complainant's words.

Mr. Hayes: To go a little further on Mr. Philip's point, did members of the compensation board actually go and look at the crane, or did they just accept the evidence from the corporation?

Mr. Emmink: We had evidence before us that we felt was sufficient to adjudicate the claim, so we did not send someone out to ride it.

Mr. Hayes: For example, you do cover claims for a person using an air tool or air gun, not the jackhammer so much, but where there is a lot of repetitive motion?

Mr. Emmink: Oh, yes.

Mr. Hayes: You have accepted those claims?

Mr. Emmink: Yes.

Mr. Hayes: You do not feel there was any repetitive motion by the crane operator?

Mr. Emmink: We are dealing with a different body part. Generally when you have the operator of the air tool, you have a disability involving the hand, the wrist and, in some cases, the elbow. That, as I understand it, is quite a bit different from the back, or even the shoulder for that matter.

Mr. Hayes: In other words, you are saying that if a person is continually twisting or turning or going forward and backward, if it is the back that is injured you are not going to accept that claim, but if it was some other part of the body you would?

Mr. Emmink: The back is designed to do that kind of thing on a day-to-day basis. You are not asking the back to do something it was not meant to do. Whereas with the vibrating tools, the body was never meant to withstand exposure to that sort of thing on a prolonged basis without suffering some problem.

Mr. Sheppard: How old was this man?

Mrs. Catton: He was 45 years old in 1981.

Mr. Sheppard: The board said he was up 72 steps, 72 feet. What kind of crane was it? I presume it was anywhere from 40 to 50 to 70 feet in the air.

Mrs. Catton: I do not know, sir. It is an overhead crane so it runs on tracks above the main work area.

Mr. Sheppard: It has to be a big crane to lift 10 tons.

Mrs. Catton: I would think so.

Mr. Sheppard: Usually before becoming a crane operator you are what is called a grease monkey, because it is very difficult to get a crane operator's licence. When you are up 40 or 50 feet high, it is a lot different operating a crane than it is operating a bulldozer.

It is a lot rougher operating a bulldozer that is building a new road or has an earth mover on it than it is operating a crane, because you have to be more careful when you are 50, 60, 70 feet in the air. I would have to question why he would even be operating a crane if his back was bothering him.

Mrs. Catton: The first evidence, and this is his own evidence, was that the first back pain he had was in the summer of 1980. It went away, he did not lose any time off work, and then the pain became more severe. In January 1981, he was laid off. In March 1981, on the advice of an orthopaedic specialist, and to the best of my knowledge, he had not gone back to operating a crane. It was a progression of the disability as opposed to somebody who started off day one operating the crane with a bad back.

Mr. Sheppard: You said he had to lean out the window. I have a few machines at home too. Even if it is winter time, most of these machines now have air-conditioning or windshields with heat to clear them. I question whether he would be leaning out of a window at 70 feet in the air. If he was, I would question whether the labour board would let him do something such as this.

Mrs. Catton: I do not know anything about new cranes. He started to operate this crane in 1968. It is at least 15 years. Maybe they have changed the construction of cranes. I do not know.

Mr. Sheppard: Going back even that far--

Mrs. Catton: There was no evidence that it was air-conditioned; no evidence at all.

Interjection.

Mrs. Catton: There is no evidence that I know of anyway.

Mr. Sheppard: Can you tell me what size crane it was?

Mrs. Catton: No, I cannot. Maybe Mr. Emmink can answer.

Mr. Emmink: The employers do not actually describe the crane, except to say what it does and to refer to the fact that it will pick up a 10-ton weight using an electromagnet.

Mr. Sheppard: Lifting 10 tons, they would be very careful leaning forward and going back. It would be a lot easier and it would not be nearly as hard on you if you were driving a D7, D8 or D9 bulldozer. I would give you a little advice. The next time, have a look at the crane and have a look at a D8 or D7 in

action. That would give some idea of what evidence you are hearing in the future.

3:50 p.m.

Mr. Hayes: I do not know whether Mr. Sheppard has been up in one of the cranes or not. There is a lot of difference being up in one of those cranes. There is a lot of pressure on that individual up there. You have people underneath you, obstructions and things like this. I do not know the work area, but I do know that when you are sitting in a bulldozer you are sitting more like this here. In a crane, you are leaning and stretching and having to look in all directions. There could be a lot of stretching.

It is a lot different when you are up there because you are running steel on steel a lot of times. With your little weld or seam or whatever, you are going to get a certain amount of bumping and jarring even when travelling with the crane, never mind having a load on it. It can be a very rough ride on an individual.

Mr. Sheppard: It is the same as the man with the brakes. You are not going to hit the brakes very hard but if you are driving a D7 or D8, you would hit the brakes a lot harder because you are closer to the ground. There is a big difference. I question when they say, "The brakes were hard to push in and they were not as hard as some of the other cranes because they had hundreds of cranes." You are not going to be pushing those brakes that hard to make any sudden jerk, because anything could happen. As you say, there are people down below.

Mr. Hayes: If I may, the witness said the brake was very hard and stiff. The supervisor also admitted to this, did he not?

Mrs. Catton: The supervisor admitted that somebody other than the complainant had complained about the stiff brake pedal.

Mr. Morin: My question has already been answered.

Mr. Pierce: I have a couple of questions for clarification. Does this crane operate on only one shift?

Mrs. Catton: I do not know.

Mr. Pierce: We make reference to other operators who have run the crane for very short periods. This guy has been on the crane for a number of years all by himself. Were there no witnesses who had replaced him during vacation periods, or is it used only on an eight-hour shift? There must be somebody else who runs this crane.

Mrs. Catton: There is co-worker 2. When the company had cutbacks--this is his statement: "I have been a crane operator for many years. When the time comes to cut production, I am usually assigned to crane 113. I have complained time and time again to the foreman as to the conditions of the foot brakes but there has never been any improvement of these brakes. The crane is old, the foot brakes stiff, resulting in pain in my left leg and back." This is signed by a specific co-worker.

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Mr. Pierce: Is that part of our material?

Mrs. Catton: No, it is not.

Mr. Pierce: I am reading co-worker 2 on page 15 of the material supplied to us. It says: "Co-worker has not operated crane 113 since approximately 1968 except for the occasional shift. The only record of back problems is related to a specific incident on crane 174."

Mrs. Catton: That is the employer's evidence concerning this person's testimony.

Mr. Pierce: I have no evidence from the Ombudsman on operator 2.

Mrs. Catton: We did not specifically address all of that information in our report because we were under the impression the board had accepted that there were both mechanical and operational difficulties with this crane and that it was an old crane. In fact, the employer acknowledged at the appeals adjudicator hearing that it was an old crane. We have assumed everybody had accepted that there was--

Mr. Pierce: I would agree that it has to be a relatively old crane if it is operating with a manual foot brake. Overhead cranes are now operated with solenoid-operated, magnetic-type brakes and not dependent upon a man standing on the brakes to stop the crane, particularly when he is carrying a 10-ton load. I am sure that is not the norm today in the steel mills or anywhere else where there are cranes that lift a 10-ton load and have it swinging from a pendulum, whether it be 20 feet off the ground or 60 feet.

I am very concerned that this is the only operator who has been on this crane for any length over the period that he has been an employee of this company and that it is only run on an eight-hour shift. It sounds like a reasonably large company if it has more than 1,000 employees, yet it runs only during the day. In a steel mill, it does not seem very possible or very right to me. There has to be somebody else running this crane as well.

I spent a fair amount of time on overhead cranes, both in control cages as well as just sitting in the crane and running it with a manual set of controls, and there is no question in my mind that there is a lot of vibration, regardless of whether you are carrying five or 10 tons, and at the point of lift when the crane inches its way up.

In the same respect, there are minute controls so the lift is very slow at the start and then picks up in speed. However, it depends on the type of crane; there are a hundred different types manufactured. That information is not available to us here; so we do not know what he was operating with. Was he using hand lever controls on a friction brake to lift the load, or was it a magnetic control?

Mrs. Catton: Just to simplify the issue: The question is

whether there is jarring and bumping while operating this crane. You are suggesting, without a doubt, whatever kind of crane it might be, there would be some vibration and jarring when he is moving the crane.

Mr. Pierce: I do not agree with the board's opinion that the back was made to be shifted back and forth 1.5 million times over a lifetime, because that is the way the joints are. I would be hard pressed to find a doctor who would tell me that my back could be shoved forward, backward and sideways a million times in my life and I would not have trouble with it. I do not go along with that idea either.

There is room for some question of whether the human back can stand the types of things to which it is subjected in the case of this crane. I have to assume it is an old, dilapidated piece of machinery.

Mrs. Catton: Let us assume it is an old crane and the company keeps it in reasonably good repair, but that does not eliminate the very real possibility or probability that there is bumping and jarring when you are operating the crane.

Mr. Pierce: Exactly.

Mrs. Catton: There is enough evidence to suggest clearly that the brake pedal on this machine was stiff. The electrician who repaired it acknowledged to the appeal board that he had to go in and try to repair the brake pedal a number of times because it was stiff. Another co-worker stated he would not operate the crane because of that problem.

We did not detail all that information simply because, in our view, the appeal board has accepted that there were both operational and mechanical difficulties with the crane. We assumed it was given that there were problems with it and that there would be jarring and bumping.

Then you go to the medical evidence. The doctors acknowledged the jarring and bumping and said this could cause an aggravation of the condition and therefore there should be entitlement.

Mr. Pierce: Just a point; I would doubt very much that an electrician would be doing repairs on a manual brake; it would be a mechanical problem. Co-worker 4 is an electrician. I do not understand the relevance of the reference to him in this case. It says: "On the odd occasion I may go for a ride on the crane for a few moments to ensure that the problem is rectified." He would not rectify a mechanical brake problem. If anything, it would be a mechanic who would ride on the crane and check out the manual brake. I see some gross errors in finalizing the report here. I do not think anybody has done a good job on either side.

Mr. Poirier: I have had an interest in environmental health and the conditions of employment, especially in the operation of heavy equipment. I was the founding president of the Prescott Farm Safety Association, and I am a farmer myself; so I

know there is a direct link between the vibration of the seating or standing position in operating heavy equipment, whether it be a crane or a tractor.

I know how many millions of dollars are being and have been spent by manufacturers to design the seating and operating position of equipment, especially farm equipment. I know for a fact there is medical evidence that links the driving position and posture and the controls to back problems. I have seen films of what happens to a farmer's spinal column because of the vibration as he drives along in a tractor.

4 p.m.

Last night I was reading that 80 per cent of all North American adults will have problems with their backs at some point. I do not think the kinds of driving conditions you have in a crane, a D7, a bulldozer or whatever are normal things to expect, considering the limitations on the condition of the human back.

Right now, as we are talking, there are people operating heavy equipment who are doing what is described as the usual body movements, and because of those usual body movements they are having back problems. That is a fact of life. There is enough medical evidence that I have seen myself, without even being a doctor. It is reasonable to assume that in this case, and in other cases, after 15 years of operating this crane, it would be normal that he could have this back problem caused by it.

A lot of my farmer neighbours have back problems. When I operate my tractor all day long and push on my left brake all the time, especially when I operate close to a pit without wanting to go into that pit, I press damned hard on that brake pedal. I have a lower back problem at night when I go back home, and that is from one day's operation.

I fail to see how you can disconnect and throw this case right out the window this way. There is too much evidence to relate that to normal life, after 15 years of operating a crane high up in the air. Look at the mechanics of being 40 or 50 feet up in the air and lifting a 10-ton load. There is a hell of a lot of vibration up there, no matter how you cut the cake.

In your normal day's operation of a simple tractor, you do a lot of contortionist acts for which you could be in the Guinness Book of World Records. You twist to the left, you twist to the right, forward, backward, you look back. It is very hard on the back. To this day, John Deere and Ford of England have spent millions trying to find the ideal tractor seat, because that spinal column is getting a hell of a lot of battering.

Mr. Baetz: The board, if I understand this, stakes its case on the fact that the only diagnosed condition is a degenerative disc disease. In other words, as I read it, you are saying that is why this man has a problem; he has a disease, a degenerative disc disease. From there you seem drawn to the conclusion that, for that reason, you do not feel obliged to compensate.

I hope I can state the question properly. The question in my mind is that even though it is a disease creating problems for this person, is there not also a work-related aspect to his situation?

For example, if this same person with the degenerative disc disease were a watchman in that same steel company, or wherever it is--I presume he is working in a steelyard--he would stand or sit all day and could carry on his functions quite easily. Obviously, he would not be coming to you for compensation.

Now we are back to the job-related situation; because his job is such that it has aggravated the symptoms of his disease, would that not make him eligible for some assistance?

Disease is something to which we are all subjected, and you can argue it is not work-related, but the fact that he has to work and has worked in the position means he has been vulnerable for some 14 years. Because he is vulnerable to problems arising from his disease under conditions that are job-related, should you not consider some compensation for him?

I am not being very articulate here, I realize.

Mr. Emmink: No. I understand exactly what you are saying, Mr. Baetz. You have made yourself very clear. I must admit I am inclined to think much along the same lines where there is a situation such as you have described. I am so inclined except for the legislation, which requires that there be an accident. The board has taken the position that in this case there has not been an accident.

Mr. Baetz: There has to be an accident? I thought we had heard yesterday or the day before that there does not have to be an accident; it can be a situation at the place of work.

Mr. Emmink: "Accident" is defined in various ways in the act.

Mr. Callahan: It says "accident, incident or event."

Mrs. Catton: As part of the legislation, "accident" is defined in three ways. Mr. Emmink has it in front of him.

Mr. Emmink: "'Accident' includes a wilful and intentional act not being the act of the worker, a chance event occasioned by a physical or natural cause and disablement arising out of and in the course of the employment." It is this last--

Mr. Baetz: What is that last one? Read that a little more slowly.

Mr. Emmink: "Disablement arising out of and in the course of the employment."

Mr. Baetz: Then that is not necessarily an accident or something that took place at one given event.

Mr. Emmink: Precisely.

Mr. Baetz: It is over a period of time.

Mr. Emmink: In some cases that is true--where the physiological norm has been exceeded. That is where we differ. The board has taken the position in this case that the physiological norm has not been exceeded for this individual.

Mr. Baetz: It has been exceeded for this individual, because he has a degenerative disc disease. The work he has been in for all these years obviously exceeds the norm, because it eventually made him an invalid, or at least he could not go back to work.

Mr. Emmink: Except it all started at home when he was gardening.

Mr. Baetz: I know that is in the report. The first real problem he ran into because of his disease happened in his garden.

Mr. Emmink: Planting trees, I think.

Mr. Baetz: Under the tree or wherever. If he had been a watchman, he could have overcome that problem. He would have gone back to work. He would have been--

Mr. Emmink: This man did too. He went back to work and lost no time as a result of the gardening incident.

Mr. Baetz: Until he ran into more problems.

Mr. Emmink: It became worse.

Mr. Baetz: These then were strictly work-related.

Mr. Emmink: He claimed sickness and accident benefits, and that complicated things for us. He did not claim compensation.

Mr. Baetz: I gather his English is not the greatest. He thought, "Well, he is not going to be a complainer; he will take the easy way out"--

Mr. Emmink: I know reference has been made that the man did not understand English, but on his claim for compensation he gave English as the language he preferred to communicate in. He did not require an interpreter. He had several conversations with our staff where there was no difficulty in understanding him. I do not know that we can raise a language barrier as being the cause for him not having reported things when perhaps he should have.

I think he himself, from the word go, did not know what his back problem was related to. He does not seem to have had an idea until after he got into a discussion with his doctor. His doctor said, "I think this is related to your work," and he said, "By golly, I think you are right." The events from that point on led to why we are here today.

Mr. Baetz: My feeling for the moment is that his doctor is right. Even though he had that vulnerability, that disease, the problem that took him to a doctor eventually was related to his job. He would not have gone if he had been a watchman.

4:10 p.m.

Mr. Emmink: Neither I nor the board has any doubt that the doctors, both the family doctor and the attending specialist, believe it is related to his work. The board does not agree, and I suppose it is for this committee to decide.

Mr. Chairman: Thank you.

Mr. Henderson: I found myself putting a fair amount of weight on the degenerative disc disease and then I got wondering about that. Was there good hard X-ray evidence of degenerative disc disease, or is it possible that the physician simply assumed there was so much disability arising out of the injury? That there must be would beg the whole argument, of course? I am assuming that there was good X-ray evidence. Is that so? It refers to L5-S1, so I assume they found something on that.

Mr. Emmink: Yes. I can respond to that, Dr. Henderson. The X-rays of the lumbar spine taken by the specialist showed a marked decrease in the L5-S1 disc height. No other abnormalities. Pedicles appeared to be normal.

Mr. Henderson: So he had a collapsed disc, or something like that.

Mr. Emmink: Yes. I do not know if it was--yes, it probably was. There was no indication of a prolapse or anything like that.

Mr. Henderson: No. That was my first question. The other one is, is he asking for only sickness and accident benefits, or is there an issue of disability, total, permanent, and so on? I think it was mentioned a moment ago, but let me make sure I understand if it is relevant--maybe it is not relevant to what the committee has been asked to do.

Mr. Emmink: If this were a case the board had accepted on the basis of aggravation, we would accept it on the basis that the compensable accident, if it were a compensable accident, temporarily aggravated the underlying condition and entitlement would cease once he reached a pre-accident state. So the question that we would have to determine is: When, if ever, had he reached a pre-accident state? It may be that he never reached a pre-accident state, in which case likely benefits would be ongoing and there would be a pension award.

Mr. Henderson: I was coming at it in a different way. If he has progressive degenerative disc disease, one would assume that sooner or later he is going to get into trouble anyway. But he got into trouble sooner, faster, and more acutely, because of the nature of the bumping and jarring of the crane. He would therefore be entitled to some sickness and accident benefits, and

so on, presuming that at some point the disease would have caught up, or maybe would not catch up, but it would run concurrently. Do you follow what I am getting at?

Mr. Emmink: Yes. It is extremely difficult, administratively, to take a situation such as that and say, "At this point in time, you likely would have reached this state anyways, even if you had not had the accident." That is a difficult position to take and an even more difficult position to defend. That is why the board, in accepting these types of claims, has not used it, and has said instead, "We will pay you until you reach your pre-accident state."

Mr. Henderson: If he never reaches the pre-accident state--

Mr. Emmink: If he never reached the pre-accident state, then he could go on and receive benefits as if there had been no underlying condition, except in some cases there may be a reduction on permanent disability assessment to him.

Mr. Henderson: If the man has a chronic progressive illness--and I suppose degenerative disc disease is one--but a more obvious one, such as leukemia or something, and his symptomatic state is aggravated by an injury, he could end up being pensioned for the rest of his life for something that fundamentally had nothing to do with the work place.

Mr. Emmink: Yes. The classic example of that would be diabetes, for instance, where somebody sustains a cut finger or a cut foot and has underlying diabetes, and the cut is compensable. It becomes gangrenous and there has to be an amputation. Those types of cases would be accepted by the board.

Mr. Baetz: Would be?

Mr. Emmink: Yes.

Mr. Callahan: When I initially read this, I thought that the suggestion of the board was that the gardening had created the problem. I was just going to give you an example. I have the same back problem--

Interjection.

Mr. Callahan: All I want to know is, as I sit here, if I am entitled to workers' compensation. You are telling me that by sitting here and listening to all this and having to sit here and get that back problem that I would not be compensated, that this would not be an--

Mr. Emmink: It depends on whether or not you are exceeding the physiological norm by sitting here.

Mr. Bell: If the pain was not there, you would probably set it off. That is unusual.

Mr. Callahan: In any event--

Mr. Baetz: Have you thought of resigning?

Mr. Callahan: Never. It is going to be Liberal forever.

I had to look at this other piece of information I did not have before I left a little while ago. It seems to me an agreement has been reached that the board will not deny a claim solely because either the claimant or the board is unable to identify a specific accident, incident or event. Surely, if this is not a specific accident, it is an incident or event.

Mr. Emmink: Except when it comes to backs. If you read the chairman's letter of September 1 that accompanied that agreement, it will put it all into perspective for you.

Mr. Callahan: Have you got something against backs, or what?

Mr. Emmink: I have nothing against backs. I do not know what I would do without one.

Mr. Callahan: There is a principle I was discussing with Mr. Bell and I am not sure it applies to this. It is called the "pregnant fishwife." You take your victims as you get them. If you run down somebody who happens to have an existing disability, you are stuck with it.

Mr. Emmink: Sure, and the board does that where there is an accident.

Mr. Callahan: Then I have no difficulty whatsoever. I can draw a conclusion very quickly in finding that this back problem was exacerbated by the crane. I do not know what all the debate about it is. Help me stand up quickly, too.

Mr. Chairman: Is there any further discussion? May we have a player?

Mr. Baetz: Could I ask just one more question? What is this person's situation today?

Mrs. Catton: He is back at work but in modified work. At least up until 1984, he was not working on a crane. He was working as a labourer.

Mr. Baetz: In the same company.

Mrs. Catton: Yes.

Mr. Baetz: So in very practical, everyday terms, supposing he were to get his compensation here--

Mrs. Catton: He would get nine months of full benefits when the doctor said he could not work for sure.

Mr. Baetz: During which months he did not get anything.

Mr. Pierce: Minus his sickness and accident.

Mrs. Catton: Yes. The compensation board agreed to pay the sickness and accident money he had already received.

Mr. Baetz: I see.

Mrs. Catton: But there is a possibility that the board might assess him for a permanent disability award, recognizing he had a pre-existing condition, and might reduce it, if they determined that he had not returned to his pre-accident state. All he is asking for is the nine months of benefits.

Mr. Bell: Mr. Baetz asked the question I was going to ask. You are going to leave it to the board's discretion entirely whether anything beyond nine months is appropriate. That is within the scope of your recommendation.

Mrs. Catton: That is right.

Mr. Chairman: Is the committee prepared to go in camera?

Mr. Bell: Members, before the committee does go in camera, Mr. Warrington and Mr. Emmink, thank you very much again for your always very thorough assistance, and thanks to Dr. McCracken and your other associates.

This is the last time Linda Bohnen will appear before you, probably in any capacity. Linda came back and assisted Dr. Hill for this specific purpose. She is no longer with the Ombudsman's office. I hope I can thank Linda on your behalf for the assistance she has provided to the committee for a lot of years now. She has been particularly helpful to Dr. Hill and his predecessors and to the committee. You will have a big job, sir, finding a replacement next time. Thanks, Linda.

Ms. Bohnen: Thank you very much.

Mr. Sheppard: Mr. Chairman, could we ask her where she is getting her next promotion? Where are you going, to work for a ministry or out on your own, or what?

Ms. Bohnen: I am mostly taking care of my daughter. I am a housewife.

Interjection: Great job, first class.

Mr. Philip: Well done. Is that a kind of double-dipping?

Ms. Bohnen: You would have to ask my husband that.

Mr. Bell: Mr. Emmink, you had something to add.

Mr. Emmink: Yes, a very brief comment. First of all, I would like to add my appreciation and that of Mr. Warrington, I am sure, for Linda's assistance in dealing with the board over the years. This will probably be my last appearance before the committee as well and quite definitely Mr. Warrington's. I would

like to say I have enjoyed these sessions. I found them interesting and challenging. I know we have not always agreed, but I have a good deal of respect for the committee process and I have enjoyed it.

Mr. Warrington: I agree with Mr. Emmink's comments, Mr. Bell and Mr. Chairman. Thank you very much for your co-operation and help to me.

Mr. Bell: I do not want to unduly prolong it. Forgive me, I did not realize this was potentially your last attendance. I thank you both. Probably the best compliment I can pay you both is to say I work harder for these Workers' Compensation Board sessions than I do for any of the others and the reason is the high calibre of assistance and the full preparation that you both bring to the committee. So again, thank you.

Mr. Callahan: I have got a couple of questions, Mr. Chairman. People seem to all be leaving now I have just come here. Has it got anything to do with that or what? The second one one is: When is the party? I cannot miss that one.

Mr. Emmink: You will be invited.

The committee continued in camera at 3:21 p.m.

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Government
Publications

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
WEDNESDAY, SEPTEMBER 11, 1985
Morning sitting



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Shymko, Y. R. (High Park-Swansea PC)

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Poirier, J. (Prescott-Russell L) for Mr. Newman

Clerk: Decker, T.

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Bell, J., Counsel

Madisso, M., Research Officer, Legislative Research Service

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman

Meslin, E., Executive Director

Zacks, M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, September 11, 1985

The committee met at 10:05 a.m. in room 2.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: Will the committee come to order. I call on the counsel.

Mr. Bell: The committee met in camera yesterday to deliberate on Dr. Hill's complaint number 14. It has decided to accept and support the recommendation of the Ombudsman and will be making reference to that in its next report with an appropriate recommendation. I do not think anything more needs to be said about that case.

The committee has yet to deliberate and make a decision on complaint number 3. Although it has made a decision in principle on number 1, it has to deliberate further respecting certain practical matters. We do not have anything more to say publicly on that.

Mr. Zacks: Was there any decision on the environment matter?

Mr. Bell: Yes, thank you for reminding me. The committee deliberated and decided that it was appropriate in the circumstances to make a recommendation to the ministry that the matter be assessed on its merits, and that in the circumstances it was only fair to all of the parties that it be done by some independent means. It would be equally important to be fair to the ministry as well as to the complainant. The ministry should not be open to any further comment upon a second decision, that it somehow had prejudged the issue. That is all we can say now, that the details of reference will be contained in the report.

About four matters remain on the committee's agenda. I do not have any particular order for dealing with them. Let us deal with the shortest one first, the jurisdictional challenge. You have provided us with a copy of the high court decision, which all members have. I understand from Mr. Zacks that you anticipate an appeal by the board on that decision.

Mr. Zacks: The boards indicated earlier that they would consider an appeal.

Dr. Hill: That is far from being positive.

Mr. Zacks: We have to wait and see.

Dr. Hill: We have to wait and see. There is no immediate indication they are going to do that.

Mr. Bell: I have always adopted the principle that the sub judice rule applies until after the appeal period has expired. It has not as yet. It is better to defer any discussion of that until we know. Can you advise the committee through me in writing as soon as it is known whether--

Mr. Zacks: Of course.

Mr. Bell: If an appeal has not been launched, then the committee may want to make some comments. It is obvious you are very pleased with the decision.

Dr. Hill: Absolutely.

Mr. Bell: It follows the Ontario Court of Appeal decision of the Ombudsman respecting the Health Disciplines Board decision of Mr. Justice Morden. It also has applied in some way to the Supreme Court of Canada decision involving the British Columbia Ombudsman as to the nature of decisions, and functions of governmental organizations that you are entitled to include as part of your jurisdiction.

Unless you have comments or questions in a general way, I recommend that we defer this.

Mr. Shymko: Agreed.

10:10 a.m.

Mr. Chairman: Any comments? The recommendation is accepted.

Mr. Morin: Does this mean that because the Ontario Labour Relations Board has challenged the office that all the others will follow suit? I am thinking of the Health Disciplines Board. Remember when there were a large number of files held in abeyance? I am thinking of the Ontario Flue-Cured Tobacco Growers' Marketing Board. We had to hold on. Is this the same?

Mr. Zacks: No, there has not been any repetition of that experience. No other quasi-judicial tribunals have jumped on the bandwagon.

Mr. Morin: Do you expect they will?

Mr. Zacks: I have been given some indication by at least one board that they are extremely interested in the outcome of this decision and are waiting to see what happens with it.

Mr. Morin: I am thinking specifically of the Ontario Municipal Board for instance. Do you think they may challenge you?

Mr. Zacks: No, I do not expect they will.

Mr. Bell: There is one item on the committee's agenda that you have to consider. I am catching you by surprise on this sir, forgive me. It has to do with the special report that the

select committee tabled in the Legislature about two years ago on human rights. I am asking you for comments for obvious reasons, because of your background and reputation in this area, but, members of the committee, that report is included in tab 1(c) of the material. That is the entire report.

Just by way of a brief background--

Mr. Zacks: Excuse me, could we have a copy of that. We are at a disadvantage. We do not have it.

Mr. Bell: One of us will get you one. I do not think it is necessary for you have the report for the purpose of this discussion, but we will get you one.

Those of you who were members of the House will recall the background. In May 1980 Jim Renwick put forward a motion. The motion was to request that this committee consult with various and appropriate groups and report back to the assembly on ways in which, and I will quote, "this assembly may act to make its voice heard against political killings, imprisonment, terror and torture."

The committee was given a fact-finding exercise and a request to consult with appropriate individuals and bodies. The committee undertook that.

I should say that resolution was given a full debate. I know Yuri participated. The resolution was passed unanimously and those who spoke to the resolution from all three parties, endorsed it completely and wholeheartedly.

The committee undertook the task and met with all of the persons it believed appropriate, our United Nations representatives on both the human rights committee and commission, and various groups such as Amnesty International. Ian Scott in his capacity as the representative for the International Commission of Jurists, appeared before you. All of them endorsed the principle that the Legislature of Ontario or any provincial Legislature in this country, has some duty to take notice of, and to do something about that problem.

It was not intended that there be any formal legislative process, nor that there be a regular time on the Orders and Notices for the debate. I think, given what is going on in South Africa now, sanctions by this province and others are probably a great example of how provinces are able to get involved.

This committee reported back. You have the report. It recommended quite simply, and this is found on page 13 of the material, that there was a need to make the assembly's voice heard, and that there was a duty in that respect. It concluded that the best way to assist the assembly on an ongoing basis was by a committee. Not surprisingly, it recommended that its term of reference be expanded, in the terms as set forth on page 13:

"The committee shall, when it considers necessary, consider, review, report, and recommend to the Legislature on ways in which

the assembly can act to oppose and condemn acts of political killings, imprisonment, terror and torture and any other acts which may be included in any covenant or document to which Canada is or may become a signatory; and, in particular, the committee shall have the power to consult with, and if deemed appropriate, establish formal relationships with, and provide actual support to governmental and nongovernmental organizations..."

"The committee shall further have the power to receive, consider and review specific examples of the kinds of actions herein mentioned and, if deemed advisable, to report thereon to the Legislature with any recommendations for actions."

In that way, I guess it is a watchdog, a bit of a conscience, and certainly the agent of the Legislature.

The report was never debated. I am sure all of you know the background and the reasons better than I. It was felt at the time, that the government did not want to give that responsibility to a select committee. It might be seen to be a derogation of the responsibility of the executive branch of government. In any event, it was not done.

On the order paper for this committee, Dr. Hill--and I invite your comment--is the question of whether this committee wants to retable this report with an addendum saying, "Please debate and please consider, because we still think it is an appropriate way to proceed." I know I have caught you offguard, but do you have any comments that might assist?

Dr. Hill: I did not come prepared to discuss it, and I have not yet read it thoroughly. I remind the committee, in terms of thinking about it, that the functions and the role of the Ombudsman are certainly consonant with the Universal Declaration of Human Rights and the 32 articles. As I mentioned before--and I think I passed those articles up to you--many of our duties are certainly in line with the Universal Declaration of Human Rights. We are promoting it constantly, through the very things we do. I would think that might have some effect on your role, and being able to work in a compatible way with the kinds of things the Legislature is considering.

For example, I notice Mr. Peterson took certain action regarding the banning of South African wine, and I noted there has been quite a bit of discussion on South Africa. I think we should consider and debate it, and I would like to come in with a statement of where I would stand on this, and what I think you should perhaps do. I need a little more time to do that, however, having been sort of caught offguard by this.

Mr. Bell: I think that is appropriate, sir. It is my doing, and I shifted gears on you. Your predecessor declined to comment at all, for his own good and sufficient reasons. I thought, knowing your background and the principles you have stated you are going to follow as Ombudsman, that you might want an opportunity of commenting.

Dr. Hill: I would like to make my comments more formal.

I would like a little time to think about them, and an opportunity to make a more formal statement. I certainly have a very strong and supportive view of a lot of this, based on my background and my thinking in the whole area. I would like to set it out in a more formal way, put it before you in a more formal way, and make my recommendations formally.

Mr. Bell: Thank you.

10:20 a.m.

Mr. Shymko: As Mr. Bell pointed out, this resolution was a resurrection of an earlier one presented by the late Mr. Renwick, prior to the format we see now. The concern we all shared, as members of the select committee, was the fact that repressive regimes in the world today are very sensitive to public pressure, especially to opinions formally espoused, and resolutions passed by institutions of our parliamentary governments or parliaments or legislatures.

One could argue that only the national government of a specific country, in this case the federal government, would have the sole jurisdiction to deal with international affairs. Therefore, it would not be appropriate for provincial governments to be involved.

We did have a letter from Mr. MacGuigan, who was the Minister of External Affairs at the time, and commended the appearance before this committee of our Canadian UN representative on the Human Rights Commission, and had no reservations about provincial legislative assemblies voicing opinions from time to time. There would be nothing wrong with the involvement of provincial parliaments, to highlight certain plights in the area of human rights, imprisonment and torture that we, from time to time, do pass.

I think, Mr. Ombudsman, your reference to the present Premier's decision to boycott certain products in this province is a sensitive reaction to concerns. We have had resolutions by the Legislative Assembly unanimous many times when individual members, either by private member's resolution or otherwise, by a request by the House leader or the leader of a party, would have the support of the House on certain issues.

I recall the situation in Afghanistan, and the late Osie Villeneuve's resolution that passed. It was quite appropriate that governments at the provincial level were involved. We felt it would make a great deal of sense if we would provide some uniformity, and allow some input through this committee, which seemed to be the normal channel.

The frustration was even highlighted at the federal government level, where there was no body or committee that really dealt with human rights violations. The standing committee on external affairs and defence, which is about the only appropriate committee that would have a human rights subcommittee, never had one. They did occasionally set up a subcommittee on Latin America, to look into that area of concern. There was a sort of a committee

to monitor Helsinki, which was really a club of senators and interested members of the House of Commons. They had no legislative clout in reporting to the House of Commons. We felt, since there was a vacuum at the federal level, this province should start setting up some framework along this line.

Mr. Chairman, I would seek your guidance or that of counsel, or Mr. Philip, or veterans of this assembly. Was a report of this committee, having been tabled, ever blocked from discussion?

Mr. Philip: It was blocked--

Mr. Shymko: Have all of the reports that were presented and tabled by this committee been discussed, or have they not?

Mr. Philip: No, they have not.

Interjection: This is the only one.

Mr. Philip: I will let you finish, and then I will comment.

Mr. Shymko: My understanding is that all of the select committee's reports were tabled and debated. They may not have been debated at the length we normally would have expected, but they were allowed for debate. This special report was not debated on the basis of a decision of the House leader at the time, and I recall both myself and the last chairman, Mr. Runciman, tried to convince our House leader that it would be appropriate to have this discussed. The reasons that were advanced were the following, and I can tell you this specifically because there is nothing secret about it.

The federal government had announced it would set up a permanent subcommittee of the standing committee on external affairs and defence to deal with human rights. The argument of the House leader was that since there was a statement at the federal level that such a committee would be established, there was no point in doing the same thing provincially.

The only reference I saw to the establishment of such a committee was prior to the June meeting in Ottawa of the specialists dealing with basket 3 of the Helsinki accords on European security and co-operation. Approximately three months before that meeting in Ottawa, a subcommittee dealing with human rights was suddenly established at the federal level. Whether it continues to operate I do not know. I can tell you only that the major argument used at the time was that this would be an infringement on the federal level of jurisdiction, that the feds were moving in the direction of establishing one and there was no point in our getting involved.

I do not share that opinion. I still feel this report warrants debate and discussion outside this committee by members of the Legislature. I would support retabling it. I do not know what procedure would allow for this; I imagine it would be by a recommendation from this committee. I still see a great deal of value in providing a uniform framework to listen to deputations on

violations of human rights and to assist human beings whose plight we all share.

I can only say to the Ombudsman that we all support the sanctions announced with regard to South Africa; there is no one in this Legislature who condones that regime. But we would like to see an equal application of that in other areas that are just as repressive.

I would like to see sanctions not only on South African wine but maybe on Stolichnaya vodka, which is still sold by the Liquor Control Board of Ontario, from another repressive regime. I would like to see a uniformity in our position on the sale of Lada cars, parts of which are manufactured, as is proven by vast documentation, in concentration camps. Steering wheels and other things are manufactured by inmates.

One could go on, but I think we all agree there should be some uniformity in the position of this Legislature and this government when we do get involved in human rights so that we are not criticized for being biased or for not applying our concerns equally to all regimes in every part of the world.

Mr. Philip: I appreciate the statement of support Mr. Shymko has just given for the committee report. If we want to be perfectly honest, though--and I do not want to polarize the situation by making a controversial statement--the real concern behind the scenes was that the executive branch of government did not want to give this committee the power to initiate its own investigations. I think that was the issue, and on several occasions I was approached by members of the governing party and told, "We can go along with this, provided it is only the executive, only the government that can refer matters to the committee."

The counterargument was that it would take a very long time and involve a very long process to do that. In the hearings we had, the value of it was brought out to us by people, be they from the Scarborough Foreign Missions Society or from whatever groups were concerned. They said that often the ability to save someone's life depended on the public exposure in any public body of the fact that he had been arrested, and it had to take place within a very short period of time.

10:30 a.m.

I have had the personal experience that, after I had gone on radio and television and exposed the fact that certain people had disappeared in Argentina, their relatives claimed it had saved their lives or had got them a reduced sentence. We no longer have that problem with Argentina, but I happen to have been very concerned with it at the time, because a number of people living just south of my riding were coming to me with case after case.

Part of the problem is that we have to have some body to which our constituents whose relatives, friends, intellectual allies, fellow professors or whatever who suffer an arrest and are in immediate danger, can go and say: "So-and-so is in jail. We are

very afraid that his physical being is in danger. This is what has happened." A quick resolution can then be sent to that embassy saying: "We know this person exists and has been arrested. Here are some of the facts." That does not change the regime, but often it changes the possibility of the person mysteriously disappearing or being murdered in some jail cell.

The second matter that was under debate and that we never really came to grips with--I am not sure we will in this committee, but I hope the Ombudsman will put his mind to it and address it--is whether the human rights function of this committee should apply only to violations that are external to Canada or whether it should apply also to alleged violations within the province. That is an interesting issue in the light of some events that have taken place in British Columbia in the last couple of years.

In other words, should we be a body that deals simply with alleged violations in Chile, the Soviet Union, Uganda or wherever, or should we also be a body to which someone can go and say, "My human rights as a citizen of Ontario are being violated in this manner"? That is another issue we have to come to grips with.

I do not think the committee ever really got into that. It became too controversial and people backed off. We said, "It is better at least to get something than simply to have our committee report defeated." I am wondering whether in the spirit of increased co-operation of minority government it may perhaps be the time for the committee to look again at that issue.

The downside of it is that it could politicize the committee and the committee has not been politicized before. The downside may be that perhaps another committee, not the standing committee on the Ombudsman, should deal with it. Perhaps the standing committee on administration of justice should deal with it; that is a political type of body. We still have to come to grips with the idea that there should be some body within the province--not just the Ombudsman himself, because it may not be directly under his jurisdiction--that can involve itself where there has been a violation of human rights.

Some of the aspects that are not covered under the new Privacy and Access to Information Act might be the scope of that kind of committee, to look at where a person's right to privacy is perhaps being violated, not just by government but by private enterprise and so forth. This might be an issue that could be referred to that kind of committee.

Those are some of the issues I see as important. I hope my comments have been restrained. I think Yuri understands what was going on; I know he was a little anxious about what the government was doing. I appreciate the fact that he tried to moderate the government's stand and I hope we can get on with it.

Dr. Hill: This is why we should be doing something and should have a commitment. As I said earlier, if you agree that we are guided in principle by many of the articles in the universal declaration, we should be doing something. This is why I asked for

a little time to give you some advice on what I think we should be doing and what we should not be doing.

For example, some of the things Mr. Philip mentioned should really be passed around and kicked around a bit with the Ontario Human Rights Commission. The commission should have a chance to opine on the code, the mandate of the code and the kinds of things it may want to do here. Perhaps we should talk to them about it as well. Canon Borden Purcell, the staff and the commissioners will have some views on it. It is directly in their area in many ways if you talk not only about what is covered by the Human Rights Code but also about some of the informal things they do and some of the things they should be saying or would like to say. This is why I should talk to them first, find out what our niche is here and what theirs is and spell it out a little more definitively. This is why I asked for a little more time to think it out more carefully.

Mr. Bell: It is another matter. The committee will have to deliberate and make a decision on whether to report it in.

I know I caught you flatfooted this morning, Dr. Hill. Again, my apologies. At your earliest convenience for your submission, the committee will certainly wait for your submissions before making any final decisions during its deliberation on that, for obvious reasons. The committee may wish to invite comments from colleagues in the House.

Mr. Shymko: What procedure is allowed or can be used at this stage to have this special report presented? The clerk may have to look at procedures that may be available.

Mr. Bell: We have a precedent. This committee has tabled one of its reports twice. You might remember the one that had black lines around the front saying, in effect, "If you do not do it properly this time, the whole system is going to fall apart."

You just write a one-page report with a recommendation annexing this report to it. Say we recommend that it be tabled again and this time debated, and that it be adopted, subject to what Todd's advice and that of the clerk might be. This committee may decide to table any darned report it wishes within its terms of reference.

Mr. Shymko: I wonder whether we could make a decision or have a sense of unanimity from the members of this committee about whether the clerk should pursue it and that we are unanimous that this special report be tabled again.

Mr. Philip: Part of it really depends on when we hear back from the Ombudsman. I do not want to debate the report again or debate it in the House until I have heard the Ombudsman's views and have them in print.

Mr. Shymko: I find that rather unusual. We did not have that condition to the initial decision to file the special report. The filing of that special report was not conditional on the opinions of the last Ombudsman. I do not know why we should do that now.

Mr. Philip: Because in the case of the last Ombudsman we had an Ombudsman who was completely unco-operative and who absolved himself from any responsibility in making comment on it. In the case of this Ombudsman, we have an Ombudsman who is co-operative and who has expressed interest in bringing back some information and some comments on it. In the light of that very welcome change in the Ombudsman, the least we can do is to wait until we have his comments. We may want to change part of the report or do a new report or an amended report based on the Ombudsman's comments.

Mr. Bell: On that point, we either put that report or do not put any. People might be able to make the argument that you cannot do that thing again.

In my opinion, this committee may decide to put one of its other reports again, particularly one that died on the Orders and Notices, but I would be a little concerned if we started to fine-tune it. The most important decision is whether you want to get the question before the House.

Mr. Shymko: Exactly.

Mr. Bell: What that question is, I think in my simplistic way, is secondary. If you get support for that question, then time will permit you to do perhaps many other things you might want to do.

10:40 a.m.

Mr. Philip: I am not arguing that you do not put it and table it again. I am suggesting that, by talking to the House leaders, we have some control over when it will be debated. I am suggesting it not be debated until we have the response from the Ombudsman.

Mr. Bell: That is only fair.

Mr. Shymko: Again, I cannot figure out why we are putting on the brakes on this, considering the adamant and very strong support Mr. Philip and all of us gave to the special report, unless we presume that the Ombudsman would have a negative recommendation to this special report. Knowing the Ombudsman, I have a feeling that will not be the case. If that is not the case, I can sense right now the Ombudsman certainly would have no objection to this report being tabled by us even without the condition that he express his opinion first.

Mr. Philip: I said fairly clearly--

Mr. Shymko: May I finish?

Mr. Philip: It is grossly unfair to accuse me of putting the brakes on when it was your party that put the brakes on.

Mr. Shymko: May I finish? If I understand Mr. Philip's comments as reflecting those of the Ombudsman with regard to this report and if he would, in a very positive vein, reinforce our

tabling again of the report as a vehicle that will give greater weight to the reasons we are tabling it again, then I can see some logic. But I would not want this to be stalled for another year, year and a half or whatever period of time.

Mr. Philip: I think the record will show that I indicated I was in favour of tabling it. All I suggested is that it not be debated until such time as we have the comments from the Ombudsman. The reason for that is twofold. First, I expect he will be supportive of it. Second, I think he will have some input that will be very valuable on the processes that can be used in implementing what is essentially only a one-page document or resolution. That kind of input will be valuable in the House for the debate among all members so they understand exactly what we are all about.

It was not me or my colleagues who stalled this. It has been stalled because of other people in the Legislature. We were the ones who were pushing it. I am pleased you are willing to push it again.

Mr. Shymko: I was pushing it too. So was everybody else.

Mr. Philip: That is fine. I hope you have more success with some of your colleagues.

Mr. Shymko: We hope to have more success with the present government, which you are backing and which I think is just as sensitive. That is the reason we think it could and should be tabled.

Dr. Hill: I just want to say, to put all sides at ease, I will be supportive in general and in principle. I take that position. I just thought I could be of help to the standing committee by amplifying some of the pitfalls, showing some of the other factors that might be involved and having a few preliminary discussions with the Ontario Human Rights Commission. I would really hate to sidetrack my whole commission and the body for which I have worked for so many years. I would like to have a few discussions with them and then give you a document that can be useful. There is no question about the fact that I am going to be supportive of it.

Mr. Bell: Except, Dr. Hill, to set the terms of that discussion, this report does not contemplate--

Mr. Shymko: It does not contemplate domestic violations.

Mr. Bell: --domestic violations. As a matter of fact, it was considered and for the moment specifically deferred and eliminated from the terms. I think the words used when it was debated were, "Let us crawl before we run." There are other good and practical considerations, not the least of which are the code and the Charter of Rights. There may be all sorts of vehicles in place. I appreciate that you wish to consult the commission, but you need not engage yourself or them in the question of domestic violations, for the moment in any event.

Let me telegraph it, I guess. The reason I invited Dr. Hill to comment is that I was damned certain Dr. Hill was going to support the principle.

Dr. Hill: I do, no question.

Mr. Bell: As Mr. Philip said, you have another ally. If you want to go that way you have the potential for another ally.

Dr. Hill: I do not want to impede your progress, but I just say I support it, and if I can be helpful doing what I said, then I will.

Mr. Philip: I do not want to be argumentative with counsel, but I will. Part of the debate in any piece of legislation is not only the content of that legislation, but also the implications. Where do you go from here as a result of this legislation?

I think it is perfectly in order to have a fairly wide ranging debate on the resolution, including discussion of where we go after the implementation of that resolution, and where we go once we are on that path and in that direction. That is why it would be useful if Dr. Hill consulted with the human rights commission and, in fact, addressed himself to the domestic issue.

Mr. Shymko: Mr. Chairman, once before we went through this whole debate of domestic and international violations of human rights. It was unanimous that this report deal strictly with international violations of human rights. I recall the argument, as a matter of fact. I was one of those who alluded to expanding it and not to negate totally some of the violations of the human rights that this committee may look into once in awhile.

The argument which I understood you backed at the time, Mr. Philip, was that we had an Ontario Human Rights Commission to deal with domestic violations and that we had a federal human rights commission to deal with domestic violations and if I recall correctly--I will have to check with Hansard--I believe you had supported that this special report deal exclusively with international violations of human rights.

I think there is no problem whatsoever for this report to be tabled for the sake of debate. The debate may not come up for a half a year or maybe a year from now knowing the routine of procedures in the Legislature. I am sure it will not be debated immediately after being tabled and there will be enough time for the Ombudsman to make any comments after this report had been tabled, supportive of our recommendations and this report.

I cannot understand Mr. Philip's logic in making this a precondition of tabling this report, in the light of the support that verbally has already been expounded and clearly pointed out by the Ombudsman now.

Mr. Philip: Either Mr. Shymko is a very slow learner or a very bad listener.

Mr. Shymko: I am a very good listener.

Mr. Philip: I have said three times that I am not against tabling the report. Now how many times do I have to say it to get it through your head as to what our position is and to have you stop distorting our position?

Mr. Shymko: Then we are in agreement on tabling the report.

Mr. Philip: The political realities were that we knew we could not get anything stronger than this through. That is why we did not expand the scope of the report. You know what majority government was like.

Mr. Shymko: Do I understand that Mr. Philip has just said we should table this report?

Mr. Philip: I said it five times. Do you want me to say it for the sixth time before you finally understand what our position is? God damn it, how dense can somebody be?

Mr. Shymko: Relax Ed, relax.

Mr. Chairman: The clerk informs me it does not come within our terms of reference at the present time. We will have to have a resolution before the House before we can retable it. Our terms of reference cover the report of the Ombudsman, and it is not included in the present report of the Ombudsman. Am I correct in that?

Mr. Bell: It is not the first time, and it will not be the last, that the clerk and counsel have had a different view. I appreciate what Todd is saying. When you read the words of the order of reference, you do not see a special resolution or a special report there. However, there is long standing authority that where a committee fulfils a term of reference and reports to the House and the House does not do anything with it, that committee, if it continues or survives, may remind the House and again ask the House that it be done.

10:50 a.m.

For example, this committee did that once before. I do not know what number it was, but the fourth or fifth report was clearly tabled in the House without reference to the Ombudsman's report or dealing. It was tabled under the category of unfinished business. I would be flabbergasted if anybody in the House took a technical position with you that you could not report on unfinished business. Perhaps it is funny coming out of my mouth. Perhaps it is more important at this time to be less concerned with formalities and technicalities and just to put that question in front of the House and have that document in the House and part of a debate. If somebody wants to stand up and say, "You do not have jurisdiction," let him say it. But at least you have the report, and while you stand up and say, "We do have jurisdiction," you can make the pitch for the report.

There is another thing, which is the list of the people who attended before you: The current chairman of the human rights commission; the current Attorney General (Mr. Scott); and a current justice of the Court of Appeal who was formerly the Canadian member of the United Nations committee on human rights. They are a formidable group, all of whom said, "Yes, you should do it." I recall that Ian Scott was one of the biggest proponents. I would be interested to see how the government of which Mr. Scott is now a member would react.

Todd is not mistaken--I had better watch out, because somebody might read this--when he tells you your terms of reference, but when you go back and read things like May's Parliamentary Practice and see what committees may do on an ancillary or basket power, they can deal with unfinished business.

Mr. Chairman, it will be considered in camera, but I think Mr. Philip and Mr. Shymko have captured what probably is the wish of the committee members concerning the report.

I turn next to the matter of the amendments to the Ombudsman Act. Maybe we will recommend, Dr. Hill, that you report on human rights matters.

This is tab 2(iii). All I have done for you is to include the latest communication passing between the committee and the former Attorney General and the committee and Dr. Hill's office. The key document in that is Roy McMurtry's letter to me of last August indicating his government's intention to table a bill at an early opportunity, and subsequent inquiries determined that the early opportunity was the spring of 1985. Obviously it was not done, and the reasons it was not done are equally obvious.

Dr. Hill, in your opening statement to the committee, on page 23--

Interjection.

Mr. Bell: It should be filed under tab 1(a). That is the approximately 40 page statement that Dr. Hill made to the committee the very first day.

On page 23 and for the next three pages he touches upon the question of the amendments. He starts out by saying that the amendments are long overdue. That is something everybody would agree with. The committee should hear from you about whether and to what extent it is appropriate for it to get into this discussion now in view of what may be expectations on your part as to a bill tabled in the Legislature in the upcoming session.

Mr. Zacks: I am sorry, Mr. Bell. What did you say?

Mr. Bell: You had better give us a progress report and your views about whether and to what extent it is appropriate for the committee to start talking about things like amendments now, and implicit in that are rules.

Dr. Hill: I have a few brief comments and then I will

ask my counsel to elaborate a bit more in just a few moments.

On Tuesday, September 3--and you have this before you--I raised the matter of amendments. As you are aware, the Ombudsman Act was passed in 1975. Since that time Ontario has not stood still. Literally hundreds of pieces of legislation have been passed or amended to reflect the evolving realities in every policy field in this province. Many of these legislative changes were the result of recommendations made by the Ombudsman. However, this has not been the case with the Ombudsman Act.

In fact, Mr. Zacks reminded me of a number of things that have happened in other ministries and a number of legislative changes that have taken place because of actions by the Ombudsman. You might want to elaborate on that later.

The Ombudsman Act is one of the most important safeguards against maladministration in this province, but regrettably the act has not been subject to needed legislative review. In 1980 my predecessor, the Honourable Donald Morand, proposed a number of amendments to the Ombudsman Act for the consideration of the Attorney General.

As I stated in my annual report, when I became Ombudsman in 1984 I reviewed the still outstanding proposed amendments and added several more that I considered to be of supreme importance to the better functioning of the office. The effect of some of these amendments would be to permit the Ombudsman to perform his investigative function more effectively for the benefit of the people of Ontario.

When I appeared before the committee last Tuesday I advised you that most of the proposed amendments were housekeeping matters and I briefly reviewed the more substantive ones. These included a power to comment publicly on investigations and on my responsibilities, a mandate to conduct public education programs and a power to make ex gratia payments.

I am hopeful that the long road on which these amendments have travelled will soon come to an end. General agreement has now been reached between my office and the Attorney General's office, and the final touches to the amendments are now being put in place. Once this is completed, I will provide the committee with a comprehensive list of all the proposed amendments. I am hoping that your support and assistance, after you have seen that list, will help to expedite the passing of the amendments.

Mr. Bell: Dr. Hill, is it your understanding that the government, and particularly the Attorney General, intend to table a bill in this session of the House?

Dr. Hill: No later than the spring. Yes.

Mr. Bell: All right. The committee has recommended in at least two previous reports that, for obvious reasons, it is better suited to receive and consider the bill for clause-by-clause review than is the standing committee on administration of justice. One would assume because of the Attorney General's

involvement that it would usually be the justice committee that would receive that bill, and the committee has said to the Attorney General that when it is tabled it should be referred after first reading to this committee for consideration and reported back. Do you concur in that view?

Mr. Zacks: We do. Yes.

Mr. Bell: Do you know the Attorney General's position in that regard?

Mr. Zacks: We have not discussed it to that extent yet, but the people with whom we did meet in the Ministry of the Attorney General in discussing our amendments indicated they did not see any problem in doing it. We have not actually discussed it, to my knowledge, with the Attorney General himself.

Dr. Hill: My executive director would like to make a statement on that.

Mrs. Meslin: I have to correct Mr. Zacks. Dr. Hill and I had a meeting with the Attorney General. We did discuss it, and he did understand that that was the procedure. It appears to us that he is prepared to follow it.

Mr. Bell: All right. In your view, before that happens, should we be discussing any of these amendments?

Dr. Hill: I take no exception to that. I think that would be quite proper.

Mr. Zacks: What do you mean by that? To meet before a bill is--

11 a.m.

Mr. Bell: I heard Dr. Hill say that as soon as the bill is finalized, he will be giving the committee a list of the amendments.

Dr. Hill: Yes. That is right.

Mr. Bell: I would assume that is before the bill is actually tabled.

Dr. Hill: Yes.

Mr. Bell: Well, if the committee is going to get the bill, what is the use or benefit in considering anything beforehand?

Mr. Zacks: It was essentially a matter of courtesy to give it to you.

Mr. Bell: All right.

Mr. Zacks: Because you did receive the initial packages, as I recall, and it was always our intention to keep you apprised

of those amendments we felt were important.

Mr. Bell: Would you agree with me though that it is better, if we are going to look at the thing, to let us look at it one time?

Mr. Zacks: Yes, I do.

Mr. Bell: When it is referred down.

Mr. Zacks: I have no objections to that.

Mr. Bell: I take it that the package of amendments you expect includes the two items you discuss on pages 24 and 25, that is, the question of secrecy or your ability to make public certain aspects of an investigation when you "believe it to be in the public interest"?

Dr. Hill: Yes.

Mr. Bell: The other one is the question of continuing education programs, having some legislative responsibility for those?

Dr. Hill: Yes.

Mr. Bell: Okay.

Dr. Hill: That had been the case during Mr. Maloney's tenure.

Mr. Bell: Yes.

Dr. Hill: It had been dropped under Mr. Morand's tenure and then I wanted it to be formally reinstated by legislation.

Mr. Bell: I cannot resist it. How would that responsibility be implemented in a practical way? You would--

Dr. Hill: I would think the Ombudsman should have to report in his annual report what public education programs he had promoted and worked on during the previous year. He would have to make public through his report and be responsible for doing that. It would, indeed, have to be there in the legislation, spelling out definitively what he did in the past year to promote education in the province and promote an interest in the act.

Mr. Bell: So it is not confined to education in the institutional sense through the Education Act?

Dr. Hill: No, not at all.

Mr. Morin: I am still not clear. By public education program, do you mean what promotion of the office?

Dr. Hill: What the Ombudsman did during the year with respect to conferences, institutions, working with schools, universities and community groups to promote an interest in

observance of the act.

Mr. Morin: But you are allowed to do that now?

Mr. Bell: No, he is not.

Dr. Hill: It is not in the legislation. Forget about me. If an Ombudsman were to say, "I am not going to promote public education; I am not going to do anything at all to show any interest in the act, other than handle complaints," then that Ombudsman would have every right to do so under the current job.

Mr. Morin: So in other words, it becomes the responsibility--

Dr. Hill: As it is in the Ontario Human Rights Code, it would become a responsibility of the office to promote public education.

Mr. Zacks: An example of that is one of the so-called federal Ombudsman has taken the position that because there is nothing in that agency's legislation indicating there is a need for public education, or even a need to advertise, they do not do it at all, and refuse to do it.

Dr. Hill: Now, again in Ontario, it is specifically stated in the Ontario Human Rights Code that the administration must carry out a public education program. It is right in the act, and we do not have that. So as I have said before, if an Ombudsman after me were to say, "I am not going to promote public education," he would have every right not to do so.

Mr. Philip: I have some concerns about this committee getting legislation before it goes to the House. I think it is appropriate to get discussion papers and an outline of some of the things you might like in it, but I really wonder if the Attorney General would go along with giving to a committee of the Legislature something that had not been properly tabled in the House so all members could have it first. That is something which might be checked out.

Mr. Zacks: My recollection of that is that several years ago, when this was first started, the Attorney General's representative did attend and indicated there would be no objection to this committee getting that type of information. That is the basis upon which it was given to you.

Mr. Philip: It might be worth checking with the House leaders of all three parties to see whether there would be any objections to it. It is not just the Attorney General. The Attorney General may do it in good faith, feeling that he is doing something for us, and then suddenly have one of the opposition House leaders attack him for doing it. I just think there is no need to have unnecessary hassles.

Dr. Hill: We will check this out formally.

Mr. Philip: There is absolutely nothing wrong with

presenting a discussion paper and general proposals and saying, "This is the direction in which we are going," in the same way that the Attorney General will check out with the Ontario Human Rights Commission or other groups on other pieces of legislation. That is perfectly legitimate. However, if it is the actual amendments, I just think it might be worthwhile consulting with some parliamentary experts to find the propriety of that.

Dr. Hill: I would like to double check that myself, Mr. Philip.

Mr. Philip: The other question I had is this: Do you envision from the amendments, or from the amendments that you think you are going to get to the act, that it would be useful to have public hearings on the act?

As you know, any 20 members can rise in the House and send a bill to committee for public hearings. This committee has normally not had public hearings, at least not in my experience. If this is the committee that is going to receive the bill, and taking into consideration the proposed changes you have in mind, do you feel it would be educational or help you in your education function, to have public hearings? Do you feel it would be useful with regard to correcting some mistakes which may be in the bill to have public hearings on the bill? What is your gut feeling just from the kinds of changes you think you might be having?

Dr. Hill: I see no objection to having public hearings on the bill. However, I think it would be more important to have hearings on expanded jurisdiction. I think it would be far more helpful, in an educational sense, to this whole mammoth and new question of expanded jurisdiction, to have hearings on that. I suggest that in another statement I have for you.

Mr. Philip: There is one way of doing that, which is to put amendments to the bill that expand the jurisdiction and then have public hearings.

Dr. Hill: I see.

Mr. Pierce: I have a question about the second paragraph on page 24. Does that mean the Ombudsman would make special reports to the Legislature, as well as make public comments without any participation or knowledge of the committee?

Dr. Hill: I would always give my comments to the standing committee as a courtesy.

Mr. Pierce: Let me go one step beyond that. We have that courtesy coming from you presently in the office as opposed to an amendment to the act under which a replacement who follows you and does not believe that courtesy is necessary, has been given the right under the act not to consult with the committee whatsoever.

Mr. Zacks: That is not the intention of it, especially reports to the Legislature. It would be a means of reporting to the Legislature, without going through the-- /

Mrs. Meslin: He is talking about commenting publicly, Michael.

Mr. Pierce: I am referring to both because they are both referred to in that particular paragraph, and I have some problems with it.

Mr. Zacks: The intention behind commenting publicly is to allow the Ombudsman some authority to comment. This could be when he thinks a matter deserves public attention, or where a matter is otherwise brought into the public eye by other parties and he is approached for comments. It is not intended to overcome the committee process.

11:10 a.m.

Dr. Hill: Especially if there has been a major distortion or misunderstanding in the press or a misstatement in the press regarding an issue. I think I should have it in my discretion to speedily correct it. I think that is awfully important. It happens. It has happened regarding expanded jurisdiction; they have said one thing when I said another, especially within the last few weeks. I think the press has stated I have asked for specific this, that and the other, when I have said I want a debate on it. I think those are two different things. I think that is a misunderstanding, although not a major one.

That is perhaps not the best example, but there could possibly be a situation in which I would have really to react speedily to a statement in the press, which I do not have the power to do now.

Mr. Pierce: On page 26, the full paragraph: Are you suggesting here that somewhere in the overall budget of the Ombudsman be an amount of money be allocated for paying claims?

Mr. Zacks: No, that is to permit departmental organizations to pay claims out of their budgets.

Mr. Pierce: One other reference on page 29: Can you give me some examples of cases that have been brought to your attention with which you could not deal regarding municipalities, public hospitals, etc.; just briefly, I am not asking for any numbers?

Mr. Zacks: I just happen to have a computer printout.

Mr. Pierce: I am a little concerned about municipalities because they are covered under the Ontario Municipal Board.

Mr. Zacks: They are and are not.

Dr. Hill: I am going to make a statement on that shortly.

Mr. Pierce: All right, I will wait for that.

Mr. Callahan: I would like to follow up on the question put by Mr. Pierce as well. Paragraphs 1 and 2 on page 24 allow the

Ombudsman to comment publicly. I do not have any difficulty with you, Dr. Hill, but I think this is something that is going to be in place for Ombudsmen or Ombudswomen who follow you.

Dr. Hill: It is a generic term.

Mr. Callahan: Let us say, for example, and I suppose it is particularly sensitive in our position now, but then again that may be different some other time; I hope not, but maybe so. I think it would be somewhat debilitating to the government of the day, but more particularly the morale of civil servants, if either a piece of legislation, as we have seen in some respects with the Workers' Compensation Board--Are you asking, I do not think you were, you commented to the effect that this board operates badly, or the legislation was bad. I am concerned that, if there was a broad power, someone who follows you could use it as a very dangerous tool.

Dr. Hill: It is always possible, but I am merely trying to bring our legislation in line with other provinces, where they have the power to do this. I have not seen any problems in the other jurisdictions. I think we are one of the few in which the Ombudsman does not have that power to speak. I can understand what you are saying, someone could do the wrong thing, but I think you will be appointing proper Ombudsmen and I do not think that will be a major problem.

At least, within the other Ombudsmen's jurisdictions they are able to comment publicly, and I think that is something we should consider.

Mr. Callahan: In order to accept that, I would have to hope it would be phrased in a very specific fashion. In fact, I would like to see how they do it in other jurisdictions because I have some serious concerns about it. Otherwise, it puts the Ombudsman in a position of far greater power than the Legislature, in a sense. It is bad enough the press can make comments and headlines that are perhaps not totally accurate or are sensationalized, but I would be concerned--and as I say I do not say that with reference to you, Dr. Hill, because my impression of you over the brief period of time I have been involved with this committee is that you are a man of honour and of great sensitivity--because we are making this legislation for the future.

I have always found that when you give something it is much more difficult to take it away. Having said that, as long as we can see that legislation before any proposal is made along those lines--

If I could have your indulgence, Mr. Chairman, for one other item, I know--

Mr. Philip: I have a supplementary. Would you not agree that one of the problems--The example some people may be afraid of is British Columbia. One of the problems in British Columbia is that there is no committee for the Ombudsman to report to and therefore the Ombudsman, who happens to be one of the best Ombudsmen in the world today with respect to understanding the

role and so on, has no alternative but to go public rather than to report to a committee. If he had a committee to report to--well, knowing how polarized it is in BC, it might not lessen the heat--but at least it would be a buffer.

Mr. Zacks: If I could just add to that, they have seen the wisdom of our system and they are trying to implement a committee process in British Columbia, and also in New Brunswick, because it is a necessary adjunct to the ultimate fulfilling of the Ombudsman's function.

Mr. Philip: The other thing that is different in British Columbia is they have a government that, with the greatest respect, is violating human rights. It is a place where perhaps more public statements on it by an Ombudsman are necessary than would have been made necessary, in recent years at least, in Ontario by the former government and, I hope, the present government. It is not as likely to pose as major a problem here as it has out in the west. I hope we never get a government in Ontario that is as bad as the BC government.

Mr. Callahan: Just to follow up on that, I appreciate your supplementary because it does bring to light the fact that there is no committee in BC. There is a committee here and it seems to me the question of speaking out on these issues is part of the political process. It is a matter that should be dealt with by people who are politically accountable.

It would also, in my view, tarnish the office of the Ombudsman if he got into a great contest with the politicians' feeling that they had been sort of bush-whacked. I think it would have a limiting, and perhaps a tarnishing, effect on the Office of the Ombudsman.

Perhaps it could be done this way: the amendment could be brought in such a way that the matter would first be aired with the committee, and if the committee, in its political or sensitive judgement, felt it was a matter that had to be attended to or addressed publicly, it would either do it itself in the forum of the Legislature or whatever. However, as I say, I have some concerns.

Dr. Hill: What would happen if you had a gross misstatement--I am saying this hypothetically--in the press about an issue or a case that had not been made public and that really tarnished the office? Do you not think the Ombudsman should have the discretion to reply immediately to the gross misstatement, distortion or lie?

Mr. Callahan: I would have no difficulty with that. I think every human being should have that right if they are misquoted.

Dr. Hill: That has happened. I got in some tussles with the Sun. I will not say any more than that or reveal who the parties involved were. I can see that happening on a number of occasions. I just want the opportunity to be able to respond immediately without having to come to the committee, come to this

person, to clarify it. By that time, the thing has been forgotten and the press damage has been done.

Mr. Callahan: I have no difficulty with that, but if it is in--

Dr. Hill: Maybe we can word it in such a way that I would have the kind of discretion that would--

Mr. Philip: I do not know whether you build it into legislation or just into understandings. One way of avoiding that is the process we have developed with the Provincial Auditor which is that if he has a special report or he is presenting a report, he presents it to the committee and he simultaneously presents it to the press. Then either the committee or the auditor may comment on it.

11:20 a.m.

In that way, it is in the public domain, but you cannot prevent the Provincial Auditor from answering questions in the hallway after he has tabled his report. Rather than have this kind of scrum atmosphere, we simply have special reports or reports presented to the committee simultaneously. There is a lockup kind of system.

Dr. Hill: Let me give you another example, and it is not too farfetched. Where a huge case is pending, a major matter with millions of dollars involved, and I am accused by a group of people in the press of not taking any action, of not doing anything, of not having started an investigation and they supposedly do an exposé on--

Mr. Callahan: Something like the trust companies.

Dr. Hill: Whatever.

When they do an exposé on the office of the Ombudsman in which they attack it for not doing anything, for incompetence. I think I should be able to respond to that immediately in the press.

Mr. Bell: I am sorry to interrupt. You have a vehicle right now to do that.

Dr. Hill: I have never done it.

Mr. Bell: You have never done it before, but this committee has a subcommittee called the communications from the public subcommittee, and if some of your complainants are taking shots at you in the press, maybe you should consider inviting them to communicate with that subcommittee. The subcommittee can very quickly give you a vehicle to comment through the committee.

Your predecessors have done it before. I can think of a gentleman who was going to--I will not say what he was going to do--but he was going to do it to a lot of us, including me. Arthur Maloney had a vehicle, the committee, to comment publicly on the matter, and it cleared the air. It presumes that the press hangs

on every word this committee records, but that example shows that you already have the machinery if you want to utilize it.

Mrs. Meslin: Would you clarify that? I do not understand it. If you have a group of people who are involved in a situation such as Dr. Hill was describing who are not specifically our complainants but who are part of the larger action, and if they complain in the press that they have heard that the Ombudsman is supposed to be looking into this thing and is doing nothing, are you suggesting that Dr. Hill not respond to the press but come to this committee and say, "You find those people and let them come before you"? It seems to me--

Mr. Bell: The way it could be done would be to suggest to those people that they might take their concerns to the committee, and if the committee decides it wants to hear the matter--

By the way, you know that very rarely does the committee hear from people in person, although it does receive communications. In all cases the committee asks the Ombudsman to comment.

Dr. Hill: I am concerned about one thing. I just want to make this comment; I made it earlier. In most jurisdictions that I know of, Europe, Canada, and the United States, the Ombudsman has that power. Why should it be excluded in Ontario?

Mr. Callahan: Perhaps we should check that out.

Dr. Hill: You should look at it.

Mr. Bell: The power to comment publicly?

Dr. Hill: Yes, they have that power.

Mr. Bell: There is no doubt that in the Scandinavian countries--

Dr. Hill: If we gave you the experience or something of that nature and let you know, I think it would help you.

Mr. Bell: I do not think you have to because, for a point of information, the press attends every morning at the office--

Dr. Hill: In Sweden.

Mr. Bell: --of the Swedish Ombudsman, reviews the complaints that have been opened that day and, where it is interested, invites comments from the Ombudsman. That is the extreme.

Dr. Hill: That is the extreme. Yes.

Mr. Bell: The other end is others who may comment at the appropriate time.

Mr. Callahan: I do not want to belabour the point, because there was another point I wanted to make, but it seems to me the whole question of actual democracy as well as perceived democracy is accountability. I will wait to see this, and I can appreciate what Dr. Hill is saying and the concerns he has. I for one would like to see the documents on the way they do it before I would be prepared to go along with that.

Mr. Zacks: Which documents are you talking about?

Mr. Callahan: On how they deal with it in other jurisdictions and how broad the position is.

Mr. Zacks: The vast majority of Commonwealth jurisdictions, which are based on the New Zealand model, include a power to speak publicly, almost in the same way we are proposing, where it is at the Ombudsman's discretion and in the public interest.

Mr. Callahan: Within the report the Ombudsman is looking for enlarged jurisdiction. There have been some concerns about that enlargement in municipalities, but let me give you a perfect example with reference to school boards.

As you know, under Bill 82, a child can be outside the system because the parent feels the child will get the best type of treatment outside the system. This is going to change because Bill 82 will do away with it eventually, but at present if the parents are trying to get funding and they want to appeal a decision of the school board saying they do have the program available in the school, thereby denying the parent reimbursement for the funding they spent in a private school, they have to put the child back in the system.

This is absolute nonsense. You take a child who is doing well, put that child back in the system and wait two or three months to have an appeal heard. That is a very clear example of what I consider to be a horrendous technical, legalistic approach that does not recognize the needs of that child and the overall benefit to that child. That would clearly be an area, and perhaps one of thousands, where the Ombudsman's office would be a significant benefit if the jurisdiction were enlarged.

Mr. Bell: I know Dr. Hill has something to say about expanded jurisdiction when we have finished the other issues.

Dr. Hill: Yes. I want to clarify that whole area.

Mr. Bell: Can we defer it?

Mr. Sheppard: On page 24, you say "special reports to the Legislature or to comment publicly on matters." How far would you go? You would not get into any individual cases in that comment, would you?

Dr. Hill: My general purpose there was that, once the matter had been made public, and I am not going to initiate it, and where there was an absolute distortion or misrepresentation that would mislead the public, I would then have the opportunity to clarify. That is essentially what I am trying to say there.

Mr. Sheppard: On page 26, you say, "From time to time the only way of rectifying a wrong done to a citizen is to pay him or her money." I was thinking about welfare cases. Have you ever got into any individual--

Mr. Zacks: Welfare is generally a municipal jurisdiction. Some welfare cases are appealable to the Social Assistance Review Board. In those cases, we can investigate the review board's decision, but where welfare decision are made solely at the municipal level, we cannot investigate them.

Mr. Sheppard: But 80 per cent of it is paid by the government and the other 20 per cent by the municipality.

Mr. Zacks: The way it is structured, a municipal welfare administrator is appointed, and that municipal welfare administrator makes the decisions on administering welfare and giving welfare assistance, subject to general guidelines set by the province. Based on our review, the welfare administrator is not a governmental organization.

Mr. Sheppard: Would you be a little more specific? Give me an example of what you are referring to here on page 26.

Mr. Zacks: We have had a case in our office for some years now. We have closed it, but we have been keeping in correspondence with the complainant. It involved a case of municipal welfare where an individual died. The deceased was in a certain financial situation before he died, and the parent was in dire straits. There is a provision under welfare assistance to give a sum of money to assist in funeral expenses. This municipality had a policy of not paying that benefit. It is a discretionary benefit that is entirely within the scope of the welfare administrator's powers. They complained to us.

We actually had two complaints of that kind. Our position was that we could not investigate that complaint, because it is essentially a municipal decision. That person, the parent, has been in correspondence with us for years saying, "What has happened to your jurisdiction?" etc. We have been putting that person on hold. We do not have jurisdiction, but it is something that may happen some day.

11:30 a.m.

Mrs. Meslin: Mr. Sheppard, are you asking if we are talking about welfare, or are you asking what this means?

Mr. Sheppard: I was asking to give me an example or two of what you mean.

Mrs. Meslin: What this means?

Mr. Sheppard: Yes.

Mr. Zacks: I thought you were asking about municipal complaints.

Mr. Bell: What about complaint number 3?

Mrs. Meslin: What you mean is, when would we be talking about paying this kind of money? What we are saying is, if we come across a situation where both the ministry and the Ombudsman agree the person should get money and the ministry was incorrect and should pay out \$1,000, there are certain instances in their legislation where the ministry says: "We do not have anything that allows us to pay the money. We want to pay it, but where are we supposed to get it from?" This amendment will allow us to say the ministry can pay the money, and it will come out of general revenue.

Mr. Sheppard: You want a little more flexibility?

Mrs. Meslin: It is not us. We are in agreement with the ministry. We do not order them or anything. They say: "We would love to pay it. We agree with what you say. But we do not have anything in our legislation that allows us to pay it." We are now saying, "Okay, now you have something in your legislation which will allow you to pay these ex gratia payments."

Mr. Poirier: How is this differentiated from what we have dealt with in the cases of the past few days, where we talked about money compensation, for example?

Mrs. Meslin: In those cases, the ministry or the Workers' Compensation Board has the right to make those payments within their legislation. They are disagreeing with us about whether they should. If they agreed, they would have paid it. They have the legislation which allows them to. This is the exception to the rule.

Interjection: Some do and some do not.

Mrs. Meslin: That is right.

Mr. Pierce: If a ministry were here arguing a case and both parties then agreed there should be some compensation paid, is that not an obvious cop-out by the ministry, because they know they do not have the mechanism to pay it anyway? It is very easy to say, "We agree with you that we should pay it, but we do not have the mechanism." But under the amendment, you are saying that mechanism will be available to you. How ready is the ministry going to be to say, "Oh sure, we will pay it, and we agree with you"? You get into a new area. It is a brand-new ball game now.

Mrs. Meslin: It may well happen.

Mr. Pierce: I could see myself sitting here and saying: "Oh sure, I agree with you. I am the landlord and I agree with the tenant. I should give him a bunch of money, but under the mechanism of the system, I cannot pay him." You are saying we can initiate that kind of mechanism, and I am not going to be quite so ready to agree.

Dr. Hill: Most deal in good faith. I am the eternal optimist, but I think most do.

Mr. Pierce: I used to be too.

Mr. Baetz: I have a supplementary on this committee making a decision which has financial implications for a ministry, in effect telling it to make a payment for which it does not have legislative authority.

The other day when we dealt with the houses that did not come up to standard, I recall asking the Ministry of Consumer and Commercial Relations whether it had legislative authority to make those payments. The answer was that it did not. But this committee has told them they will have to find some money to make some restitution there. They are going to find it even though they do not have legislative authority. Once this committee and the Legislature says, "You are going to pay," they will find it. They do not need special legislation.

Mr. Zacks: That is true.

Mr. Baetz: Maybe the way the system is working now is not bad.

Mrs. Meslin: I have a point of clarification, Mr. Baetz. That is in a situation where it comes to this committee, where the parties have disagreed and they come to this committee, and the committee says it thinks they should do it.

We are talking about a situation where, after or during the course of the investigation, the Ombudsman indicates an error to the ministry; the ministry agrees, and says: "You are right. We did not realize that, and we would certainly pay it, but we cannot." That would never come here.

It is at this point, when they say, "We cannot," that we say: "Can you find any way to do it? Can you shuffle stuff?" If they continue to say, "We have tried and cannot," we want to give them a vehicle whereby they can.

Mr. Baetz: Why not try a case and bring it to the committee and see what happens?

Mr. Sheppard: I have one question I want Mr. Zacks to clean up. You mentioned it and I did not address it, but you opened the door for me.

Mr. Zacks: I am sorry about that.

Mr. Sheppard: I am curious now. When somebody dies and nobody wants to pay the funeral expenses, I always took it for granted the municipality usually did it and gave him about the poorest burial possible. Is that true?

Mr. Zacks: In this municipality it is not the case.

Mr. Pierce: That is why the complainant is still not buried. He is still standing outside the door of the municipality.

Mr. Sheppard: In our municipality, if somebody dies and has no money, nobody wants to--

Mr. Zacks: I can only comment on this case. I do not know.

Mr. Sheppard: That will come up in the future then.

Mr. Baetz: I wish to go back to the general subject of this proposal to comment publicly on matters concerning the Ombudsman's responsibilities in investigations when he believes it is in the public's interest to know.

Dr. Hill, I can fully understand your frustrations under the present system. No doubt, at times you would love to go public. This is my first time in this committee, so this is the impression of a newcomer to the present system, but I cannot help but think it is very good.

You have a committee. I am impressed by the number of cases you fight out with the ministries. I am sure you have many ding-dongs with them, many of which you win, or you may lose some or you may decide your case was not quite strong enough. When you are still convinced you are right and the minister is wrong, you bring it to this committee.

In the course of the past few days, the committee has been on your side. In most of the cases, it supported you. Therefore, this system works very well, even though you do not have the right to make a public issue out of it.

Let us assume it was different and you had the ability to go to the press when you got into a scrap over a case. That situation would be absolutely loaded with real difficulties and would invite an awful amount of controversy, particularly because your mandate, as we all know only too well, deals with the whole of Ontario, its agencies, ministries, etc. In effect, every time there is an issue, it is you versus a minister or in some cases the Premier.

I do not care what political stripe they are; cabinets essentially operate along the same guidelines for survival or to function. Surely one of the major objectives of any minister or Premier is to avoid public controversy, because the minute an issue becomes public and the minister or the government is on one side fighting it out with somebody on the other, the objective is to win the argument. That is what drives them on.

11:40 a.m.

There would not be time for the kind of debate you have been having with the ministries, sitting down and having a ding-dong and finally having a ministry staff person say the ministry was wrong. Under the present system, because it is not public, a ministry can say, "Okay, we goofed," or "You have persuaded us we made the wrong decision." They might not necessarily say it was a goof, just bad judgement or something.

Once that fight becomes public, I suspect you will have very great difficulty in winning it because of the very nature of our parliamentary system. What happens? The case is built up, the controversy builds and I can see the press having a hey-day over this because it is, after all, what the press is interested in.

You find the Ombudsman fighting a minister, the Premier, the administration or whatever, and this is beautiful. The headlines will absolutely put you into juxtaposition with the government daily and very quickly you get into a situation in which calm, collected reasoning, the kind of thing I think you do so effectively under the present system, is no longer possible.

The feeling in the administration, the entire government or even the Legislative Assembly could be one of polarization.

I would think that you, this committee and the Legislature should think very carefully about changing the situation in which you can go public on every issue. If there were no committee, if this system was not there, then sure, why not go public and hope you will develop public support on your points of view, or have the ministers worry that if they do not give in you are going to go public?

As a newcomer here, I just cannot help but think the system the way it is right now works. I had a couple of cases with you and your forerunners, and I suspect a lot of the ministers do not even want a situation to come to this committee. We will try our best to work it out. In some instances it does not happen; then the committee deals with it.

The other thing that impresses me about this committee is that we do not approach this on a partisan basis; at least I do not. We look at this in a strictly nonpartisan way. Maybe as a newcomer I still have stars in my eyes over how effective the present system is.

I know the frustration is there, and I guess it also links in partly with the next paragraph, although you separate the next thought from this one and say, "How the hell do people know there is even an Ombudsman if we cannot have a little press every once in a while?" I hope and I think there are other ways for the public to know there is an Ombudsman and what he is doing and how he can help them--but not if there is an absolute certainty there will be controversy and the Ombudsman is opposed to the administration.

Mr. Poirier: I fully agree with you in principle, Reuben, but I think it would be normal to look at all possible ways to give tools to both the ministries and the Ombudsman to resolve a problem before it gets to the committee, especially in cases where both are in agreement.

It is bad enough in a certain sense--if I can use the word "bad"--in a situation where a maximum number of cases have to come in front of us. All of us have other things to do and, as you mentioned, the purpose of this committee is to try to have a minimum number of cases.

I am more than willing to look at whatever methods are possible to eliminate cases. If you had announced to us, Mr. Chairman, that there were no cases for this committee to resolve, believe me, I would have been a very happy person. I am sure everyone would have been. I am willing to look at any means that can prevent those from coming here.

Mr. Baetz: Are you suggesting that maybe going public is a way of doing it?

Mr. Poirier: I guess the Ombudsman has mentioned that he would do that in a reaction sense, where he felt that whatever came out in the public was an injustice to one or another of the parties or to the Ombudsman's office.

If his mandate is to make justice, and if the media come out with some injustice, it would be normal if he had a chance to correct this before any damage is done to the reputation of either the Ombudsman's office, a ministry or government agency, or a person taking on a government ministry.

I mean this in the general sense of the word "justice," because you know how something can take off in the press if it goes unabated; it can do a lot of damage very rapidly. I am talking in principle. We could look at individual cases, of course, but in the large justice sense, if his mandate is to bring justice, maybe he should be allowed to correct that.

Mr. Baetz: I would never make any proposal to stifle a process that leads towards justice. Even if a government falls, that is fine. I just think we can deal with this through the present system. As I say, I am a newcomer, and maybe I still have stars in my eyes.

Mr. Zacks: There are some cases you cannot deal with through the system, and those are cases where the Ombudsman has not supported the complaint. It would never get here.

Mr. Baetz: It does not get here?

Mr. Zacks: No.

Mr. Baetz: Where does it go?

Mr. Zacks: Nowhere; it ends. Those are the cases where if there are some errors or misrepresentations--

Mr. Baetz: So you are suggesting those cases should go to the public?

Mr. Zacks: No. I am just saying that if cases do become public and there are errors in them, or they are misrepresented by one of the parties, the Ombudsman should have the opportunity to correct those misrepresentations, because he cannot bring them to this committee.

Mr. Callahan: In other words, if one of the parties goes to the press because he is cheated off that you did not support his claim, you have no right to answer.

Dr. Hill: It would never come to the committee.

Mr. Baetz: Yes. He has no right to answer.

Dr. Hill: I cannot correct the misrepresentations.

Mr. Baetz: I can see where that would be a point of frustration for you.

Dr. Hill: That is damaging.

Mr. Baetz: The minute you have that right, or the minute you go to the press--and let us assume you would be defending the claimant.

Mr. Zacks: Or the ministry.

Mrs. Meslin: No. The ministry. In that case you would be defending the ministry.

Mr. Baetz: Very often maybe on the other side too. I just think it would lend itself to confrontation and public fights. I do not know.

Mr. Poirier: My remarks, Mr. Baetz, were addressed not only to the media side but also to the monetary side, correcting a situation where both the Ombudsman's office and the ministry or a government agency would be in agreement, where this would be resolved without media intervention, as a tool to resolve it before it has to come to this committee. '

Mr. Hayes: I can sympathize with Mr. Baetz's concerns, but also I am sitting here thinking I am reading this differently from the way some other members might be. If there is a report that is misrepresented in the media, Dr. Hill is saying he would like to clarify that issue. Am I correct in saying that?

Dr. Hill: Certainly.

Mr. Hayes: I know there are procedures, such as the subcommittee. However, what does Dr. Hill do if, on a Friday night or something, news media calls him, or he picks up the newspaper and reads an article that he could shoot holes into? How does he deal with that? How does he get hold of the committee to deal with something where the retraction should be made, say, immediately? Do we wait until we can pick a date or a week when we can get the committee together to discuss the situation?

I am just saying I do not think Dr. Hill should be going out and starting to quote different cases, but he should still have the right to make sure things are reported properly as they pertain to his office.

11:50 a.m.

Mr. Morin: The question was already asked by our counsel. It had to do with the access of the press to certain cases of the Ombudsman, as they do in Sweden. A lot of that, even though I know it is at the extreme, shows that the Ombudsman and his office are completely open.

I think you are familiar with this precedent, Dr. Hill, and that is what I want to ask you. The act would have to be amended accordingly, but let us say you have a case in Fort Frances that

has to do with a difficulty with the municipality and you have a reporter, a news representative, who really wants to follow it. He reads all the correspondence, asks the Ombudsman what he plans to do and informs the public in that area, because it is concerned. So it is open. Of course, when the annual report is submitted, it is no longer news.

Also, as far as public education is concerned, it would be excellent. People could follow a case completely. There could be certain limitations--there could be certain cases into which the press would be prevented from looking--but it is something that could be examined. Sweden has the same population as we have.

Dr. Hill: It is certainly an interesting proposal, but I would give it a whole lot of careful thought.

Mr. Zacks: The other thing we should not lose sight of is that there has been an Ombudsman in Sweden for more than 180 years and in Ontario for 10.

Mr. Callahan: Is he still there? He is double-dipping. He is triple-dipping.

Mr. Zacks: The office has been there that long. It has a much longer history and is much more entrenched in the political culture of that country than it is here. There are a number of political differences between the two systems.

Mr. Morin: It is an interesting case. It depends on the country you live in and even on how old the justice system is. It has been in place for a long time. There are cases that are extremely interesting in which the press wants to be involved and informed. That is the point I am raising.

Dr. Hill: It is something to be considered. I will give it quite a bit of thought, but I have always dealt with the press fairly openly and honestly during the 27 years I have been in public administration.

Mr. Morin: The other question concerning page 24 is about the amendment to make special reports to the Legislature. My only concern would be that the Ombudsman is very well respected all over the province as not being a political person. In making a limited statement to the press, you might sometimes make a mistake, as does anybody else. Then it becomes a real political issue.

I feel, as Mr. Baetz said, it should be pursued through the committee, because we are here to help you. We work together. If anyone were to attack the Office of the Ombudsman with respect to its integrity and loyalty vis-à-vis the government, I would be the first to defend it, because it is an excellent institution and it has created an excellent reputation.

That is the only danger I can see. I am not talking about the individual, Dr. Hill, please do not misunderstand me; I am talking about the office. Whoever will replace you may fall into difficulties that would do irreparable damage to it, and that is one of the concerns I have.

Mr. Shymko: Mr. Chairman, as you pointed out, we are well aware that five years ago this committee supported the initial list of amendments presented by Dr. Hill's predecessor. I would imagine its tendency is to continue to seriously assist the Ombudsman's office in effectively performing its responsibilities. No doubt, there will be difficulty with this whole area of open, public access or appeal to the public for support in a freer way, without that office's present restrictions.

I am sure members will be involved even in the process of public debate that will no doubt hit the media when this comes before the committee. No doubt it will be debated and discussed with representations from the public. I think the process itself will highlight your concern in a very major way.

I have always perceived your office as one that avoided confrontation, if possible. We saw the one case before this committee where apparently once things went into the public area, a way of resolving an issue suddenly collapsed. There is a tendency on the part of government always to avoid the type of public pressure Mr. Baetz alluded to. I do not think your intention is to move your office into an area where there would be more of a confrontational setting or a confrontational approach. The perception on the part of politicians, and those in our capacity, is that this may well be the trend or that the danger exists that there will be more confrontation.

I just want to ask you this: Because of your background as head of the Ontario Human Rights Commission, a capacity in which you served so well, when you make a comparison to your position as Ombudsman, do you see a definite restrictiveness in the framework in which you operate? Were you freer to public access and to state your case as a commissioner? I sense that you were.

Dr. Hill: How can I answer this question?

Interjection.

Mr. Shymko: I think you referred in your report to your background and the experience you have had.

Dr. Hill: When I was with the commission, when I chaired that commission for 11 and a half years, I was responsible to a deputy minister and to a minister. Their emphasis during those years--and I think it was a pretty good one for that situation and for that time--was that when attacked by the press in terms of distortion, misconceptions or outright lies, to answer them immediately as would any other deputy minister or minister.

I come out of that tradition: not to initiate confrontation, but when faced with absolute lies, distortion and treachery, to respond to defend the office and to defend what we were trying to do--not to initiate, but to come back from from the defensive position and respond.

Things are a little trickier when you become Ombudsman. The jurisdiction is much wider. In the commission, I dealt with race, creed, colour, nationality, place of ancestry and so on; here I

deal with all kinds of matters outside of and much broader than the parameters of the commission. It is a little more difficult.

To answer you, this is why I felt it was important, looking at other ombudsmen's offices in which they do respond, that once the office has been severely impugned by an outright lie, that you have to respond. If you do not respond, the press and the public ask: "What is wrong with the Ombudsman? What is wrong with that office?" or, "The office is going downhill." It has already happened.

You have to respond, not in a matter of a few weeks or months, but immediately, because you have to hit the issue when the issue is warm. I come out of that sort of tradition. If you wait for three or four weeks, it is dead and the public starts asking questions. The public starts saying, "What is wrong with the office?" or, "Maybe what was reported in X newspaper by X reporter is true."

These are the difficulties that came to mind when I brought this amendment in to be discussed. This is the problem I face.

I hope that answers your question.

Mr. Shymko: What I understand from your answer is that there are situations which warrant a reply from you, or a statement or an opinion--situations that are different from the procedure of going through a case, researched through all your people, and reaching a conclusion. Mr. Baetz and I have not received an example of the type of situation, and we would like to see this. I am sure you have been confronted with some of these where you want to answer the public.

Dr. Hill: Yes, I have.

12 noon

Mr. Shymko: Our concern is not to prevent you from answering the public but that you might be appealing to the public to back you outside the framework of a legislative committee, which is the forum to which the press should be coming. That is when your report comes in and is presented to the Legislative Assembly. That is when the press get copies of it, comment on it, quote you and speak to you. The press should be here every day at these hearings.

Our fear is that the Ombudsman's office--and it is a fear I am sure you will hear expressed by members of the Legislature--would seek support from the public by using the media and asking them, "Back me on this issue," while the framework and procedure of the act says you should ask the Legislature for that support through the committee.

I would like to see one or two examples of where these situations are such that you are pinned and are now inhibited from answering and cannot make any statements.

Dr. Hill: There are several things; my executive director wants to say something. I mentioned that I have a few

examples of where maybe I overstepped my bounds and responded to a vicious attack on the office. Some people do not read some papers, but I have to read all the papers, and I responded. I could have been chastised by the committee or by someone else, I suppose, but I did respond.

The other thing is that we would like you to look at, and I am going to bring before you, the experience in other jurisdictions in dealing with this sort of thing. It would be helpful to you and to me to give you some examples later on, which I do not want to put into the record right now, of what has happened and the kinds of attacks that have taken place. I will try to give you both.

Mr. Shymko: This is where I wanted to hear, just as a final request for information, a comparison with other jurisdictions. Mr. Zacks, I am sure you have the information about the other offices.

Do all these countries in which the Ombudsman has a freer rein in regard to going public have select committees such as ours? The reason the Ombudsman in British Columbia has been so frustrated and did things the way he did was that there was no select committee. Maybe I am wrong, but I imagine that in most of these jurisdictions and countries where you have that open access and where the Ombudsman is freer to act with the public you do not have parliamentary committees.

Dr. Hill: They have a standing committee in Alberta.

Mr. Shymko: The Alberta Ombudsman is here.

Dr. Hill: You might be interested in what the Alberta Ombudsman has to say.

Mr. Shymko: Is that the only one with a standing committee?

Dr. Hill: They have had a standing committee for some time; so you might want to see their experience with the press and with the standing committee and, indeed, how the Ombudsman responded.

Mr. Shymko: So, in Canada, Alberta would be one example we should look at?

Dr. Hill: Yes.

Mr. Zacks: In the two examples I gave you before, New Brunswick and British Columbia, where they are planning to institute select or standing committees on the Ombudsman, they also have the power to speak publicly, and it was felt it was a better process to go through a committee. For whatever weight that gives the argument we are putting forward, I offer it to you.

Mr. Baetz: In your situation now, and I must say I have not noticed any controversy in the press about you--

Dr. Hill: Let me assure you, Mr. Baetz, there has been in the press.

Mr. Baetz: Yes. But, for instance, where somebody who thinks he has a real complaint, which really falls outside your mandate, raises hell with you and says, "What kind of Ombudsman have you got here? He sits in his palace; he is not helping," and he or she has gone to the press, surely in a situation like that you could respond to the press and say, "The reason I have not responded is thus and so."

Dr. Hill: I cannot--not under the legislation.

Mr. Zacks: Not on the issues of the complaint.

Mr. Pierce: Where in the legislation does it say you cannot respond to the press or make comments to the press?

Mr. Zacks: The act requires the Ombudsman to keep all information secret, other than in his reports.

Interjections.

Mr. Zacks: One assumes that this individual--take the case of the person picketing our office for the past month, handing out leaflets.

Mr. Baetz: What is his complaint, for example?

Mr. Zacks: His complaint has to do with a jurisdictional matter. We have answered that concern, but the specifics in this complaint are confidential.

Mr. Baetz: Surely this would be part of your program of better public understanding and awareness. Surely you should feel free to go to the press or any one of the media to remind the public again what your mandate is. You are saying it is a nonjurisdictional case; can you not tell the press that?

Mr. Zacks: The press will ask what he is complaining about, and we can say generally it concerns a conservation authority. But when they start asking the next line of questions, "Which conservation authority; what is it about?" we cannot tell them. We feel there is that duty of confidentiality that is imposed by the act.

Mr. Callahan: Sounds like the Young Offenders Act.

Dr. Hill: Take a look at the act. Maybe Mr. Bell can add some clarification.

Mr. Shymko: But if it is nonjurisdictional, can you not comment?

Mr. Zacks: It is still information that is given to the Ombudsman in confidence.

Mr. Baetz: Who gives his information in confidence?

Mr. Zacks: The legislation imposes a duty of confidentiality and secrecy on the Ombudsman.

Mr. Baetz: If you are responding to this person who is picketing outside--

Mrs. Meslin: No. We are responding to the press.

Mr. Zacks: The press, when they call us about--

Mrs. Meslin: We are talking about the press saying to us: "You have a picketer outside. What is it all about?" You give them just a brief outline of what it is all about. They ask: "Okay. You say it has to do with a conservation authority or with a ministry. Well, which ministry specifically? Who gave you the information that said X happened or not?" We do not comment. We cannot.

Dr. Hill: We are circumscribed by the legislation as it is written. We cannot speak on it, although at times I might have been in contempt of the legislation.

Mrs. Meslin: Perhaps I can correct something I said. If what happens is in the media, if you get an article that alludes to the Ombudsman having taken some action that is incorrect in relation to that situation, again he cannot comment publicly.

Mr. Baetz: Surely you have the authority to help the public understand what your mandate is. Under that rubric, I would imagine you could say quite a bit to the press, could you not?

Mrs. Meslin: No.

Dr. Hill: We could try, but it might be a little difficult, especially where cases are concerned because the law is pretty explicit on that.

Mr. Pierce: For clarification: The actual secrecy of the case has been disrupted by the claimant going public with his case and going out, if we want to go to the extreme, picketing up and down in front of your office, making reference or telling the press, "The Ombudsman has not done a thing for me regarding the Ministry of Housing," etc.

That secrecy is no longer there. He has explained to some degree. To make the public aware of what is going on, I see no reason why, under the present legislation, the Ombudsman cannot respond by saying, "We have done everything within the power vested in us under the acts to act on behalf of the claimant and we are no longer available to go any further with the case."

Mr. Zacks: Where the information only comes from one source, namely, the complainant, and he has disclosed all that information, then the information may enter the public domain through the media. But in many cases, we receive information from various sources. Simply because a complainant deals with it or a ministry publicizes a certain aspect of the complaint, we are not in a position to release all the information, because it is the legislation that imposes the secrecy, not the complainant.

Mr. Pierce: Are you saying with the changes that are being requested here that you would be able to go public, to the press, with the information that other ministries gave you or that other sources of information provided to you, and you could discuss them publicly in the press?

Mrs. Meslin: At the discretion of the Ombudsman.

Mr. Zacks: At his discretion.

Mr. Pierce: Oh.

Mr. Zacks: And where it is in the public interest.

12:10 p.m.

Mr. Callahan: In many respects, you are not any different from, say, a juvenile court judge or a young offender court judge now who sits virtually in camera to hear a case. After he makes his decision, the press goes bananas and says, "This guy is senile," or "He should be off the bench" or whatever. But he cannot comment. He is restricted by the legislation in terms of commenting, and probably for very good reasons. If he did comment, he might say something that would tarnish the judicial system itself. That is my serious concern.

If what you are asking is for the ability simply to tell the press why you did not deal with that picketer out there, that is fine. However, it seems to me the office of the Ombudsman has to maintain its total neutrality; it cannot be partisan. It cannot even be perceived to be partisan; it has to be like Caesar's wife. It seems to me it becomes our function to address the issue either on a nonpartisan basis or on a partisan basis.

This is what I perceive happening. Let us say that because of the actions of a government, certain things take place that are rather unusual or perhaps have not happened before. The public out there perceives that it is done in an unfair fashion, but it is not within the aegis of the Ombudsman. The press goes to him and says, "Well, Mr. Ombudsman, why are you sitting on your hands while this government is dealing with this matter in an unfair fashion?" They perceive the Ombudsman as being the sole fountain of justice, like the king, even before the Legislature. I would have to turn that around. The sole responsibility and accountability are ours. The electorate has the ability either to re-elect us or to turf us out. That is the ultimate weapon they have.

I have some reservations. I am prepared to wait and see how the other provinces have addressed it. I hate to sound negative, but I think it is important that we protect the office of the Ombudsman and make certain it never does get down into the dust, into the fight, and stays up on the pedestal in terms of dealing with it on a very nonpartisan basis.

I am not for one minute suggesting that Dr. Hill or any other Ombudsman would do that, but they could say something that would be perceived in the press as being pro or con the government

of the day or the opposition of the day. In effect, what happens then? Are you and I going to have to attack the Ombudsman? That would be the height of idiocy, because it would be like attacking the king. That gives me some serious--

Mr. Philip: Obviously, you were not around when we attacked the last king.

Mr. Callahan: Yes, I did read about those, and through the attacks on the last king--

Mr. Shynko: And his heir apparent.

Mr. Callahan: --what did happen was that the office of the Ombudsman did lose some of its shine.

Mr. Philip: I think what happened was we got a good appointment in the present Ombudsman as a result of the attacks on the previous one.

Mr. Bell: You were talking about the king. You were not talking about the last time. You were talking about the king.

Mr. Philip: I was talking about the fellow who wanted to be king.

Mr. Henderson: First, I concur with the comments Mr. Baetz and some others have made about the desirability of avoiding having the Ombudsman drawn into battles of rhetoric and exchanges of rhetoric in the media.

I am concerned, however, about certain institutions, organizations or agencies that may be complained about being able to hide behind a relative anonymity that they are often able to enjoy. I am also concerned about the issue of openness in the government process--not that the Ombudsman is government, but in the process that surrounds us--because openness is a value I support.

I am wondering if a distinction can be made between becoming involved in rhetoric and polemics on the one hand as opposed simply to issuing statements that correct, to use the Ombudsman's words, lies, distortions and treachery, which I do not dispute occurs on occasion.

It seems regrettable if the Office of the Ombudsman can be slurred with lies, distortions and treachery without being able at least to make a statement of correction or to address whatever distortions may be involved. This does not mean the Ombudsman has to become involved in a vigorous defence, but at least he can set the record straight.

To do otherwise surely allows the Office of the Ombudsman to be slurred a little in a way that damages its function. After all, if people read stuff that seems to slur the Ombudsman, they are liable to say: "Well, heck. I am not going to bother with that avenue. He is obviously this or that or whatever."

I would be inclined to think the spirit of what we have been saying is that the Ombudsman can make limited kinds of statements of a corrective or counterbalancing nature. Many people have said this can be done under the existing legislation. I think it should be done, and if there is some question about it, why not make it very clear?

I do not know whether it is realistic to suggest that if the Ombudsman were to do that, he should do it in the form of written statements that would be released from his office, which would be there for the record and could even be brought to the committee so it would know that what the Ombudsman was doing was clarifying and making statements and corrections, not becoming involved in rhetoric, polemics and counterpolemics.

That might satisfy our concern that this kind of process not be stirred up and that the committee would have a way of knowing that what the Ombudsman was doing was simply addressing distortions. That seems to me to be something that would strengthen the Office of the Ombudsman and something we should consider.

Mr. Callahan: He also could not be distorted again if it were in writing. Very often when you give it orally, it can be distorted a third, fourth and fifth time.

Mr. Philip: While we were debating this--or thinking about it rather than debating it, I would hope--I got a copy of the Audit Act, because it seems to me the Provincial Auditor is to the taxpayer what the Ombudsman is to the citizen in terms of his human rights against the government bureaucracy.

As Mr. Pierce will tell you, right now the druggists' association is attacking the auditor over his investigation into drug pricing, and it has turned out a letter that it has made public. The way he handled that was simply to prepare a written response and send it to the chairman of the committee. The chairman of the committee in turn circulated it to every other member of the committee, and then it became a public response.

I could not get hold of Doug Archer, because he was in a meeting, to ask him whether he had any instance where he had been similarly attacked, but one of the people in his office said he knew of no time when the Provincial Auditor had ever made a public statement without going through the committee. This does not seem to have stopped the Provincial Auditor--or, indeed, the federal Auditor General, who tends to have a personality that is perhaps more extroverted--from making his views known and getting a lot of public support.

I am a little concerned, and I am struggling with this. I have no problems with you personally having that authority; I know you would not abuse it, and I have faith that it would be used discreetly. But we have had ombudsmen, and many of them good ombudsmen, who had personalities that were different from yours--personalities that got them into trouble with the committee of the Legislature. I think everybody knows I am talking about Arthur Maloney.

12:20 p.m.

What happens if you give another Arthur Maloney this kind of power? Will he upstage the committee? Will he polarize himself and the government? I wonder whether there is any way in which we can give you the powers to respond in a factual way to misrepresentation and at the same time not open it so wide that an Ombudsman at some future time could go on an ego trip, completely go around the committee and the Legislature and try to be God. I do not know how to balance that.

I dearly loved Mr. Maloney. He was a marvellous man, and he did a lot for the role of Ombudsman. Perhaps his name is not a good example. However, some of the public statements he made created some problems for the Legislature. What if we get somebody who is even more extroverted and goes on his own trip? If we give the power to you, what happens if 10 years down the line we have somebody with less tact, who has perhaps more ego needs than you have? How do we take it back? He will simply say: "I have the powers under the act. I am making these public statements, which I have every right to do, and to hell with the members of the legislative committee. They are doing a coverup."

Mr. Henderson: I have a comment in support of the spirit of what Mr. Philip has said. He and I are coming from a similar direction on this. My idea was that the clarifying statements the Ombudsman makes would come in written form before the committee later, and we would simply have a way of saying, "That was all okay."

Mr. Philip, as I understand it, is suggesting the statement should be circulated to the committee and we would have a period of days to object to something we think should not be said in that way. That sounds reasonable to me. I am wondering how it would work. I would hate to think of us having to call a meeting every time the Ombudsman wants to say or clarify something.

Mr. Pierce: Under the existing legislation, he can speak now provided it does not infringe on the privacy of the claimant. Statements can be made from the Ombudsman's office.

Mr. Philip: It is interesting that in this case I think there is an analogy between the Provincial Auditor and the Ombudsman. That is why I find it useful to be on both committees; there is a certain overlapping in process. In this case, the auditor did not see fit to make his statement public. He thought he had to respond to the druggists' association and send that to the committee. It was only after he did so that it became public. Then the committee members could also respond and defend him, one would hope.

Interjection.

Mr. Philip: It went to the chairman of the committee first.

Dr. Hill: Federally, it works in a different way altogether, does it not?

Mr. Philip: I do not know. That raises an interesting point, and I want to call Ken Dye's office, or have a researcher call, and find out how they handle it. If it works differently, maybe they have a process we can adopt.

Dr. Hill: To assist you in your deliberations, we will try to get as quickly as we can the details of the Alberta experience, where they have had a long-term standing committee, as to how they handle it. I do not know all of it myself. It would help me, and I think it would help you.

Mr. Baetz: This analogy with the Provincial Auditor or with the Auditor General is valid. Imagine if the press were to meet with the auditor afterwards and get down to specific cases and say; "Why did you report thus?" and so on, and the auditor replied and got into an argument with the minister who is affected. The press would have a ball with that.

He makes his report and that is it, as I understand it. He does not comment. He does not get into a further conversation with the press on specifics. Does he?

Mr. Philip: The Provincial Auditor does. He makes his report. He also has the power to make special reports. That is valuable. The Ombudsman has to have that power. If he sees an issue that is pressing, he must have the right to tell the chairman of the committee, "I have a special report and I want to table it with you." That is an important role he has to have.

The auditor now has that power, and he is using it. He tends to make a special report if he sees a particular thing. We developed a process whereby we see it the same morning. It is like a lockup; it is held after question period. We go into the lockup, and the press and the committee are briefed at the same time. Then people like Jack and I can stand around and make as many public comments as we want on the report. The Ombudsman is smiling at that for some reason.

Dr. Hill: That is what I was--

Mr. Bell: There is only one remaining item on the public agenda, and that is the question of the expansion of jurisdiction, which we will deal with after we return. I announced yesterday or Monday that we would probably conclude our work today, and I still believe that is the case.

Perhaps it is appropriate to give the committee members a choice. We can do one of two things. In view of the depth of the discussions surrounding the amendments, I would expect the depth of discussions on the expansion of jurisdiction would be the same. That is going to take a fair chunk of this afternoon. We can go in camera and then to try to conclude the items that must be concluded in camera so I can go away and do the draft report, or we can decide to return at 10 a.m. tomorrow in camera and conclude the items then.

I put that suggestion out. I realize it may have an impact on some people's schedules who have ordered their lives

accordingly. It is a better time to decide that now rather than at 3:45 p.m. this afternoon if it appears we are running out of time.

Mr. Shymko: Come back tomorrow and go in camera.

Mr. Chairman: Is the committee in favour of returning tomorrow morning at 10?

Carried.

Mr. Bell: I do not think there is any doubt that we will complete the in camera matters tomorrow morning. There is not a lot left, and a lot has been done in any event.

We are to talk to the Ombudsman about expansion of his jurisdiction, and there are communications from the public as well. There is probably a full afternoon in any event without the in camera stuff.

Mr. Chairman: We shall resume at 2 p.m.

The committee recessed at 12:27 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
WEDNESDAY, SEPTEMBER 11, 1985
Afternoon sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)
VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)
Baetz, R. C. (Ottawa West PC)
Bossy, M. L. (Chatham-Kent L)
Hayes, P. (Essex North NDP)
Henderson, D. J. (Humber L)
Morin, G. E., (Carleton East L) .
Newman, B. (Windsor-Walkerville L)
Philip, E. T. (Etobicoke NDP)
Pierce, F. J. (Rainy River PC)
Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Bossy
Poirier, J. (Prescott-Russell L) for Mr. Newman

Clerk: Decker, T.

Staff:

Bell, J., Counsel
Madisso, M., Research Officer, Legislative Research Service

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman
Meslin, E., Executive Director
Zacks, M., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, September 11, 1985

The committee resumed at 2:08 p.m. in committee room 2.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: The committee will come to order.

Mr. Bell: As was stated this morning, two matters remain for the public part of your deliberations. One is the question of the expansion of jurisdiction, and it will take the majority of whatever time you sit this afternoon.

Mr. Philip suggested the other matter be dealt with first and I think that is a good idea. It is a report of your subcommittee on communications from the public. That committee held a meeting within the past two weeks and dealt with matters that were on the agenda.

Mr. Decker is placing a document before you that has served the subcommittee in the past, setting forth certain principles and procedures upon which it will conduct its affairs. It is also intended to be information for the public. It is available for any member of the public who wishes to communicate with the committee.

Quite coincidentally, this week the chairman received a copy of a letter from a person who I believe has communicated with the committee in the past. I do not know whether Mr. Philip has had a chance to discuss it with any of the committee members or with Dr. Hill. Mr. Philip, I do not know whether you want to deal with that today or to defer it.

Mr. Philip: I can deal with it quickly. I have a letter to go out, which I can read to the members of the committee. It concerns a Mr. Y who wrote to us. If I read my letter to Mr. Y, I think it will become fairly clear how I propose we deal with this.

"In response to your request of the clerk of the committee during the telephone conversation of July 17, 1985, that the committee reconsider your communications, the committee has declined to reconsider the matters raised by you in your letters to the committee.

"As outlined in the letter dated January 7, 1985, from Mr. Ronald Van Horne, MPP, then chairman of the subcommittee on communications from the public, the committee has previously considered the matters raised in your letters. The committee is of the opinion that the matter was fully and fairly dealt with by its predecessor.

"As Mr. Van Horne's letter of January 7, 1985, discusses, the committee invites you to contact the Ministry of Energy with

regard to your complaint against Consumers' Gas System's alleged contravention of the Ontario law in the alleged removal of gas meter without a required inspection.

"However, in the matter investigated by the Ombudsman and considered by the committee, no further action will be taken.

"Yours truly, Ed Philip, MPP, chairman, subcommittee on communications from the public."

My report covers this matter as well. I will read the relevant section of the report and then give you the rest of my report.

"The subcommittee considered the request by Mr. Y that a communication from Mr. Y to the committee, which was dealt with by the committee in December last year, be reconsidered by the committee. Mr. Y argued that since a new committee is in place, decisions of the previous committee are null and void.

"The subcommittee declined Mr. Y's request. The subcommittee is of the opinion that Mr. Y's communication was fully and fairly dealt with by its predecessor and felt that granting such a request would be an aberration from standard procedure and likened it to the Supreme Court's granting a new appeal each time a new justice would be appointed to it."

That is the learned decision of the high court of the subcommittee.

Mr. Bell: Mr. Justice Philip; it sounds awfully good to me.

Mr. Philip: Is that acceptable?

Mr. Callahan: You did not suggest putting maybes in the middle.

Mr. Bell: That may be done later.

Mr. Philip: That is my counsel to you on the matter of the Liquor Licence Board of Ontario issue, which we will be dealing with in camera.

Perhaps I can give you the rest of our subcommittee report:

"The subcommittee met on Friday, September 6, 1985. The subcommittee adopted certain principles and procedures for its conduct that are being distributed to you and wishes you to adopt."

There are only minor changes from what we had agreed to in the past, the idea being that if you have invented a good wheel, you do not reinvent it. There was one minor change, as I recall, to the effect that the clerk would write a forceful and very direct letter informing the claimant we were not in a position to retry issues already heard by the Ombudsman.

It was pointed out by one of my colleagues on the committee--I forget which one--that it said "polite but firm."

That is page 5, item 9. That is the only change we have made from the previous one. It said, "writes a firm but polite letter." We removed the words "firm but" as it sounded a little as though we were using--somebody used a Monty Python analogy, which I will not repeat on the record.

Unless there are any questions on this, I propose that the principles be accepted as distributed.

Mr. Bell: Members, just to assist you, you should know that--

Mr. Philip: The Ombudsman is just being briefed on what Monty Python did.

Mr. Bell: And the chairman is just being congratulated on these weeks (inaudible).

The Vice-Chairman: He is the second most powerful man in the province of Ontario.

Mr. Chairman: I thought he had something important to tell me--a new nursing home or something.

Mr. Bell: It was just congratulations, was it?

Mr. Philip: I would think it would be a nursery school or something, in your honour.

Mr. Bell: These procedures, members, have been in place for at least two years now and have worked quite well. I do not think even in that time there was one firm but polite letter written. They were all resolved and dealt with in an appropriate way. As Mr. Philip says, it is a bit like reinventing the wheel.

I guess there is a motion, Mr. Chairman.

Mr. Philip: Hearing no objections, I will sign the letter.

Mr. Bell: Mr. Philip, you do not need to move those principles for adoption.

Mr. Philip: Hearing no objections, why do not we just take them as adopted?

Mr. Chairman: Carried.

Mr. Bell: Having concluded the communications from the public, the last item, as indicated, is the question of the expansion of the jurisdiction of the Ombudsman in Ontario. To that end, referring again to Dr. Hill's opening statement, starting at page 27 of the statement and going through to page 41, Dr. Hill has addressed certain issues for you to consider. Dr. Hill, I know you have an opening statement.

I think, Mr. Chairman, you are really going to get congratulated now.

Hon. Mr. Peterson: If I could interrupt. Congratulations, Ronnie. (inaudible) at Queen's Park in 42 years. Did she fully understand the situation?

Mr. Chairman: No.

Hon. Mr. Peterson: I have certain responsibilities as Premier. I have to speak to her about that.

Mr. Chairman: Thank you very much.

Mr. Shymko: Mr. Premier, this is the sign of a new beginning by a senior member of our caucus.

Hon. Mr. Peterson: Exactly. If that can happen to Ronnie, anything can happen.

Interjections.

Hon. Mr. Peterson: I have no right to interfere, but this is big stuff.

Interjections.

Mrs. Meslin: Is not Mr. Van Horne the minister for senior citizens?

Mr. Bell: The chairman was just reminded of that.

Mr. Chairman: He is looking me over.

2:20 p.m.

Mr. Bell: It is the next best thing to a nursing home in your riding.

All of this somehow seems unimportant now. Forgive me, Dr. Hill. I know you have an opening statement.

Mr. Philip: That is quite a reversal--Tories pleading with somebody else for something.

Mr. Bell: Dr. Hill, I think we would like to hear your further opening statement now, and then, before members begin questioning, I would like to give some additional background I think will assist them, and particularly the background of this committee. It has dealt with this issue on at least one occasion in an extensive way. I will bring that to your attention and then you can focus in on the points Dr. Hill makes. Sir, could you begin now, please?

Dr. Hill: Yes, I will. When I appeared before you on September 3, I asked you to consider the question of expanding the jurisdiction of the Ombudsman. At the conclusion of my remarks, the committee asked me to submit whatever suggestions I might have as to how it might be able to canvass public opinion on this important issue.

I have given some thought to the matter, and several strategies occurred to me that might be worth your consideration. I might also add that I have not made up my mind about expanded jurisdiction and will not until the proper process for looking at this matter has been well put into place.

How should the matter be approached? Your committee as a whole, or a subcommittee of designated members, could conduct open hearings across Ontario. Your attendance could be publicized in advance through the local media by way of public service announcements, and anyone interested or affected could be invited to present his or her views.

Another strategy might involve the whole committee sitting in Toronto and inviting selected people to appear before it. These might include municipal and provincial officials, representatives from the areas in question, such as children's aid societies and universities, persons who represent various sectors of the community such as voluntary and public service organizations as well as media representatives and any other persons who might wish to make a submission.

People who are affected should have a point of view and be allowed to present it. Universities, children's aid societies and all the others I have mentioned certainly have some thoughts on the matter and should be heard from.

A combination of both these strategies might also prove to be valuable. With the bulk of the committee sitting in Toronto and receiving submissions, a designated subcommittee could travel across Ontario, canvassing views, so all sectors of our population have input into your deliberations.

Beyond canvassing public opinion, I believe it would be equally important for this committee to thoroughly research other jurisdictions in which the Ombudsman is empowered to scrutinize the areas in question. I am hopeful the tabular and statistical information presented to you earlier will be of some value, but more helpful would be direct communication with some ombudsmen who have this experience, who have this jurisdiction and are covering these areas.

This might involve, with our help, written communications with the committee. It might involve personal discussions with other ombudsmen and even visits to see at first hand how other Canadian ombudsmen deal with these issues and approach this matter.

As I mentioned on September 3, I can assure this committee that the full resources of my office and staff will be made available to assist in whatever way possible, if you decide to go the route of a review process and find out from the public how they feel about it.

Mr. Bell: You sure made that awfully tough to argue against.

Members of the committee, by way of background; probably from the moment he was appointed--gosh his name has been mentioned

a lot today, but that is because he had a tremendous impact on what we are talking about--back as far as 1977, Arthur Maloney sought an expansion of his jurisdiction, not only to more governmental organizations, boards and commissions, etc. of the province, but also to the municipal level. One of the things the committee studied in 1978 when it travelled to Europe, Scandinavia and Israel, was the question of the expansion of jurisdiction, with some particular emphasis on standing, with the so-called local government or at the municipal level.

Just let me read two or three paragraphs which I think will fairly state the committee's position. I am reading starting at page 72 of the committee's fourth report made in 1978.

"In all countries visited, there is a recognition that the system of local government is substantially different from that of central government. This is a conclusion the committee believes to be equally applicable to Ontario. To demand the same standards of performance of local municipalities against the same criteria as is expected under the Ombudsman Act of central or provincial authority would be a mistake and would only serve to heighten the resistance that local governments would have for the establishment of such an office."

Then the committee goes on further, at page 83, and this really sums up the process of government on a comparative basis between provincial and local or municipal.

"The process of government is different, the circumstances giving rise to actions are different and the consequences of those actions are different. All of those factors cause the committee to conclude that the Ombudsman should be different from the provincial Ombudsman.

"The committee has concluded that the concept of an Ombudsman is applicable to local governments in Ontario. The committee recommends that the function of Ombudsman to local governments should not be performed by an Ombudsman who has jurisdiction over provincial or central government organizations. What the form or structure of that office or offices of a local Ombudsman might be, whether it be one or more provincially-appointed Ombudsman, or whether local municipalities or authorities be empowered to set up an Ombudsman, as they saw fit, would, in our opinion, be a matter for further study by this committee or other appropriate bodies. Input from those most directly affected is essential before that question can be resolved. To do otherwise would only serve to foster an immediate distrust and opposition by local governments in Ontario."

So, what does all that mean? It means that one of your predecessors has at least studied it to the extent of forming a conclusion that, in principle, a case can be and has been made for the existence of an Ombudsman function at the municipal level.

Because of the identified differences and perceptions, your predecessor concluded that the function or functions, as the case may be, should not be performed under the same umbrella of the provincial Ombudsman. Again, that is by way of background.

2:30 p.m.

Dr. Hill, you may want to comment before the committee members do, but as I see it, there are really three issues which have got to be addressed before we decide how to do it. Is there a need for the expansion of jurisdiction? If there is such a need, what is the scope? Or in determining whether there is such a need, what is the scope of that need?

I put that under two subcategories. Is there a need to expand your scope within the terms of your act? Are there agencies, boards, and commissions, etc., that on a definition or an examination, perform provincial functions or central functions? If so, should you have jurisdiction to deal with complaints emanating from those activities?

Second, is there a need to expand it to the municipal or local government level, which is clearly something qualitatively different than what your legislation intends? Once you determine the need, then the decision is who should perform the function. On the question of extending your jurisdiction to so-called provincial matters, if that need is identified, there certainly is no doubt it should be performed by you. On the other need issue, the local government one, if the need is identified, should it--if I could put it personal terms--be performed by you, or is there merit in the committee's previous conclusion, that there should be a separation of that function?

You may want to comment on that before we talk about anything more.

Dr. Hill: I will just comment on one aspect right now, because I certainly have not made up my mind on several others. For example, I certainly would like to hear from the municipalities.

I was interested in Art Eggleton's comments in the press that he does not disagree with the idea, but some kind of partnership arrangement could be worked out. I do not know what he was talking about at the time, but he mentioned it, and expressed a need for an Ombudsman municipally.

At any rate, all I can say at this moment is that something funny is happening to us. I will put it this way. It has been eight years since Mr. Maloney made those observations. A lot has happened in that time. In 1980, we had 200-odd complaints in respect of municipalities, and that is a little after Mr. Maloney made those comments. In 1984-85, we have 771 complaints coming in to us which are nonjurisdictional complaints in respect of municipalities, and that means something.

I guess I could break that down and tell you the nature of the complaints, or my counsel and executive director could, but there is evidence that the number of complaints is increasing and perhaps at what the statisticians would call an "increasing rate." I am just bringing that to the committee to state we not only have to look at it, but figure out what it means and how we can cope

with it.

Before answering the other parts of those questions you asked, I would rather wait until I hear comments from the appropriate bodies that have a lot to say about this. They might, indeed, influence how I think, because I have not made up my mind. However, I do want to bring to your attention the fact that complaints are increasing at an increasing rate in respect to municipalities. The city of Toronto has already sort of halfway nodded in respect of the idea and I am just saying it is now time to open debate.

I cannot answer those other questions definitively yet.

Mr. Chairman: We will start with Mr. Callahan.

Mr. Callahan: Just by way of a general opening on that whole topic, I think it is a good idea to have input from all these bodies and find out their concerns, interests and so on. It seems to me we now deal with situations in which, contrary to the legislation in a sense, people have not gone to the very last court of resort. Am I correct in that respect, for instance, if someone had a right to move before a high court judge to quash, under the Statutory Powers Procedure Act?

If we enlarged the jurisdiction by whatever nature beyond what it is now, I would think by necessity we would be required to stick to that section to the letter. People get very tired of waiting for the long backlog in courts. They get tired of the costs and tremendous expense in going to a court, and what you would have them doing is short-circuiting the system and coming to the Ombudsman.

Maybe that is desirable. Maybe that is an avenue toward which we are moving because of the tremendous impact on the courts and the lack of availability of courts to deal with these matters. Maybe this is the way one would have to go. I would be interested to know whether there is any experience like that throughout the world where people actually do go to the Ombudsman as opposed to court, even though they may have had access to the courts.

The next step is the danger of that, in a sense. I am playing devil's advocate because I fully subscribe to the Ombudsman and particularly your capacity now, Dr. Hill, but I have to look at it with respect to whoever comes after you and what is being created.

The difficulties with the supposition that maybe if we carry on our present process and we do allow people to short-circuit the courts and come to us, and that eventually they all come to us, or large numbers of them come to us, are that they are exposed to two particular situations. First, they are exposed to the Ombudsman of the day with respect to how he deals with it. Second, they are exposed to us, as a committee, as political people, making decisions.

I think the safeguards that are present in the court system--albeit they are very expensive safeguards and I think that

may be why they may fall into disuse--of supposedly being impartial, and I think to a large extent they are, supposedly not having any political feelings, which I do not think is humanly possible but they say our system creates that, plus the mechanisms of examination and cross-examination, the technical rules of evidence and so on, protect people.

If you expand it, you may very well attract that type of following. So if we are going to expand it, we have to follow the legislation to the letter, so no one could come to the Ombudsman until every other source had been looked into.

That becomes a real conundrum because, with the Charter of Rights, there are umpteen tribunals before which you could wind up and it may very well detract from the whole purpose of the Ombudsman's office which is, to a large extent, to provide inexpensive, swift--I would hope more than the courts, certainly, which are getting better every day--justice to people by getting the red tape of government to operate in the fashion in which we would all like it to operate, in a fair and open fashion to the citizens of this province.

I think Mr. Bell opened up by saying this is a very complex issue and I think the Ombudsman did, too. It is an extremely complex issue and it is not one on which we could make a decision here this afternoon just on the basis of our own experiences sitting and batting it around. It is absolutely essential that we canvass it through the suggestions that have made by the Ombudsman, but I think we must keep an open mind that after canvassing all that, we might not enlarge that jurisdiction.

I have to ask myself the next question: If we go out and we spend that time, effort and money as perceived by the public to do that, and we decide, in the final analysis that for the reasons I have stated, and I am sure lots of other reasons that all the members of this committee may advance, not to do anything, we come out of it looking like a bunch of turkeys and I think we tarnish the Ombudsman's office and maybe set it back to a large extent.

Mr. Philip: Why?

Mr. Callahan: Because I think that if we go out and gather all this information and do not do anything with it, we just come back and we are in exactly the same position as before, the public is going to think we were just on a make-work project. I am not sure that is what we want to do.

Maybe before we do anything we should canvass all of these groups, have them send us briefs in writing which we can examine here in our usual meetings. If, after examining them, we want to take the next step of having them come and address us on any issues that we are perhaps not sure about, fine. At that point, at least, we will have some idea of where we are going and whether we are going to pursue a larger jurisdiction.

2:40 p.m.

The municipal level opens up a whole host of problems. We

could wind up being the next to look at a land division committee decision or a committee of adjustment decision. A local building inspector who put stop-work orders on the courtrooms in my riding--I just tell you that by way of an aside; I think it was comical actually.

Mr. Bell: What is he doing now?

Mr. Callahan: I think he was just detained by the local provincial court judge for trespassing on the property and the work orders are gone.

It is a whole host of problems. Without looking at any of these and without closing my mind to any further information that might become available, it seems to me that at the municipal level there is not the giant bureaucracy there is at a senior level of government.

As I envisage the Ombudsman's office, it is to get one through that red tape and make government sensitive to the needs of people, so we do not get some person in the civil service taking an extremely technical approach to something and preventing it from happening.

My experience at the municipal level has been that you would talk to the staff member who was giving your constituent a bad time and it usually stopped. Dr. Hill's job might be made much easier if we could all do that, if we could all walk over to the various civil servants who might be doing that or who might be taking a hard-line approach and say, "Stop; that is it; no more."

Those are some of my humble views about it. It has to be looked at very closely, but I think it makes sense it be done.

Mr. Pierce: In respect to the statistical information on the cases referred to, by the municipalities or against the municipalities, going from 280 in 1980 to 771 in 1984, could that not be attributed to a good advertising campaign on behalf of the Ombudsman's office that it was open for business, so that more people are now aware the office is there but they are not aware it does not accept municipal problems?

Mr. Zacks: That was part of the campaign--

Mr. Pierce: That is what I mean.

Mr. Zacks: --to tell them we have no jurisdiction over municipal complaints. They indicate a general lack of appreciation among the general public in differentiating among different levels of government.

Mr. Pierce: People have become more aware of the Ombudsman's office.

Dr. Hill: The rise was taking place before my advent. If you look at the chart, things were starting to bubble well before I came on the scene.

Mr. Pierce: What would be the relationship between the jurisdiction of the Ontario Municipal Board and the jurisdiction of the Ombudsman's office?

Mr. Zacks: A lot of municipal concerns go to the Ontario Municipal Board. In essence, it is primarily tax problems, assessment problems that go there. We get many complaints about that. We receive a whole host of complaints against municipalities that either cannot go to the municipal board--

Mr. Pierce: Such as.

Mr. Zacks: Such as dissatisfaction with the conduct of staff at a library, dissatisfaction with the actions of a municipal council, dissatisfaction with flooding water damage to property, dissatisfaction with nonsmoking rules, problems with the start-up of a driving range, problems with snow removal.

Mr. Pierce: Those are zoning problems. The one about the driving range can go to the Ontario Municipal Board for a ruling. For the one about library staff, a library board is responsible for the operation of a library and you can go to that board if you are not happy.

Mr. Zacks: These are complaints that come to us. We may have given complainants information to go to the library board or to file a complaint that may go to the OMB through some process. However, there are many complaints that deal with the implementation of bylaws and so forth that may not go that route. We get those kinds of complaints.

Mr. Pierce: A lot of the complaints you are referring to go back to where we come from, and that is by being elected. If there are problems within the municipality, the local taxpayer or group or individual person has an opportunity to change the municipal government.

Mr. Zacks: Yes, that is true. It is the same argument for not having an Ombudsman. You can always change the government.

Mr. Pierce: Only not as far-reaching.

Mr. Zacks: But we have to assume--

Mr. Callahan: Did something happen while I was gone?

Mr. Zacks: --that these people have come to us after they tried all the local remedies without success. I do not have enough information because, as you may know, we do not look into these kinds of complaints to the same degree as we do jurisdictional complaints. We try to give them a reference to an appropriate source at the municipal level.

Mr. Pierce: In fairness, you are directing the complainant to the area that he should be complaining to.

Mr. Zacks: If there is some place to go, that is right.

Mr. Shymko: I wondered about the statement the Ombudsman made with regard to the increasing numbers of nonjurisdictional complaints that you have from both federal and municipal areas. Is there an increase, for example, in the number of federal complaints in the period that you cited for municipal? I am sure you would have had a similar increase from both senior and junior levels of government.

Mr. Zacks: There has been an increase at the federal level too.

Mr. Shymko: Which may strengthen your argument that there should be a federal Ombudsman. But with the increase in the municipal area of complaints one must be careful that the reason for this may be, as you pointed out, that many citizens do not make a distinction between levels of government. They have a complaint and the minute they find out there is an Ombudsman's office they simply contact you.

I presuppose things, but it may be the result of that element of more information over the years about the existence of the office, as we publicize your work and your existence. This may have been conducive to the increase in complaints from nonjurisdictional levels, including municipalities. So one would have to be careful in using the argument that the need is there.

There are, in some areas, ombudsmen already in existence. You pointed out in your report that there are two in universities. This means, perhaps, that it is the desire of these two universities to have an Ombudsman that is not the provincial institution, and to maintain the independence of a university they would prefer to have an Ombudsman at that level exclusive of the existence of such an office at the provincial level.

Would this not be the feeling that would be shared by the other 13 universities? One would have to seek their opinion before one imposes our own recommendations. Do you agree with that?

Dr. Hill: I certainly agree with the idea. I cannot answer the question of what all the 15 universities think. I set up the Ombudsman's program at the University of Toronto. I know how they feel. The other universities without ombudsmen should be canvassed to get their views. Some of them might say, "Great, take the headache off our necks and we will give it to the provincial Ombudsman." Others might jealously guard their autonomy and the right to say, "We will handle this within our family, our own university." I do not know how many will go one way or the other. The only way to find out is to canvass.

Of course, community colleges are all covered by the Ombudsman, so we get a number of complaints from community colleges. All of their complaints are handled by us. You should also recognize the fact that we are in the area half way with our foot anyhow if you talk about community colleges.

Mr. Philip: With regard to community colleges, the only thing that you may investigate is administrative complaints. You may not pass judgement on what would be considered an academic

decision?

Mr. Zacks: Yes, we do. We recently completed an investigation on just that kind of issue having to do with academic assessment, of whether a person was properly failed out of a course. There was a dispute by the complainant that she was improperly treated and we investigated that.

Mr. Callahan: I wish they had had that in my day.

2:50 p.m.

Mr. Shymko: Following the line of the general criteria that you used in seeking an expansion of your mandate is the one that, I believe, refers to bodies that are largely funded by the provincial government, and bodies that are through the regulatory process jurisdictionally under provincial regulations. Would that not make a strong case for boards of education, for example? Would you want to include them in your jurisdiction?

Dr. Hill: I think that should be considered.

Mr. Shymko: It makes a strong case to me. You have not mentioned boards of education per se in the list.

Dr. Hill: No, I am sorry, it was an omission.

Mr. Zacks: Boards of education complaints are included in our statistics of municipal complaints. In our process they are all grouped in that category. They are considered part of the municipal process.

Mr. Shymko: As I understand it, when you want your jurisdiction to expand to cover municipalities, by that you would mean boards of education as well.

Mr. Zacks: They could be included, or handled as a separate entity. It is open for discussion.

Mr. Shymko: Since your statistical reference of municipal complaints includes board of education complaints, the logic would be to deduct it--

Dr. Hill: I must state again with care, I did not say I wanted that jurisdiction. I said I wanted debate on it, some guidance from this committee and assistance on it. This is where I have been getting in badly with the press. They keep saying I want this and that, but I have not said I want anything. I want a debate or discussion on it.

Mr. Shymko: I would be strongly opposed to an expansion of your office's jurisdiction over municipalities and over the bodies listed. To exclude the boards of education would not make any sense to me, especially in the present discriminatory situation, if I may use a situation, in which staff of community colleges have access to your office with complaints while a high school teacher does not. I would see the logic in that.

Mr. Pierce: Could I ask a supplementary about municipalities? If we are going to use the word "municipalities" here, we have to be sure we all know what we mean and what the word means. It means school and welfare boards, all the boards that are covered by the municipalities, such as volunteer fire departments, garbage collectors, everything. We must be sure we are all thinking along the same lines. It involves everything in a municipality. We cannot start picking one against the other.

Mr. Shymko: It brings me back to the autonomy situation. We constantly speak of three levels of government: federal, provincial and municipal. Although the mayor of the great city of Toronto has made comments on the whole debate and indicated in the papers he would be willing to look at and study your proposition, there is a very strong sense of independence. Municipalities cherish it, and the minute you start expanding a provincial institution, even in the sense of an Ombudsman protecting the public, they see this, or may perceive it, as an encroachment on their autonomy and independence. Have you considered that element?

Dr. Hill: I certainly have. I would not argue against that. I think the best way to find out about it is to hear from people in municipal governments. I would like to hear what they think in this area. I think we have to know, and be guided by their fears and whatever they think.

Mr. Shymko: Manitoba has what is called resident administrators. Are these mini-ombudsmen, since the Ombudsman in Manitoba apparently deals with them?

In the chart where you have indicated areas of jurisdiction, and the explanatory notes, I see that you list under Manitoba there is no jurisdiction over municipalities.

Dr. Hill: That is on page 2.

Mr. Shymko: However, point 13 says, "The Ombudsman has jurisdiction over resident administrators." Who are these? Are they mini-ombudsmen?

Mr. Zacks: Resident administrators are government officials in some of these municipalities that have some involvement with municipalities, and the Ombudsman has jurisdiction over them.

Mr. Shymko: So that is a unique situation with Manitoba. We do not have anything similar in Ontario.

Mr. Zacks: No, although we have a municipal affairs branch of the Ministry of Municipal Affairs and Housing. It performs a type of function such as that. On occasion, we do get complaints through the municipal affairs branch that have a municipal connotation and we investigate them.

Mr. Shymko: That brings me to my next point. Because of the Ministry of Municipal Affairs and Housing or the Ontario Municipal Board, municipalities are in many ways linked administratively with provincial bodies. Do you not already have

some authority through that linkage system?

Mr. Zacks: It is a very tenuous link because of the position of that department. It sees itself as being more in an advisory capacity. It does not get involved in matters it considers to be primarily the responsibility of the municipality. They do not get involved in the kinds of complaints I listed earlier. They are primarily interested in major breaches of conduct by municipalities, primarily of a financial nature.

Mr. Shymko: Do you have jurisdiction over the OMB?

Mr. Zacks: Yes.

Mr. Shymko: You do. The OMB is the final body of appeal for all municipal bylaws and so on. I would see that as a major area of your jurisdiction, through the OMB, over municipalities. Am I wrong in assuming that?

Mr. Zacks: It has not worked out that way. Most of the complaints we get against the OMB are assessment complaints. There are some planning complaints, but from my review of our computer printout the majority of complaints are from individuals who have minor grievances.

Mr. Philip: Such as welfare.

Mr. Zacks: Yes, welfare. I do not mean to say they are not important. They are not the kind that would or could be pursued at the municipal board.

Mr. Shymko: We do not have the answer now, obviously. The process will continue for at least a year when the bill is presented. However, I already see various channels of jurisdiction that do exist where, because complaints have not come through those channels, you may not have perceived them to be in your jurisdictional area. I look at the reference to Nova Scotia or somewhere where the act itself does not mention jurisdiction over municipalities. I think Nova Scotia refers to something such as: "Although the act does not specifically state, the Ombudsman has jurisdiction over universities. He successfully investigated in this area." In other words, it is not in the act but he does investigate successfully.

Can we assume you can do investigations without some of the areas necessarily being specified in the act or do you want it all clear? How does the Nova Scotia Ombudsman do this?

Mr. Philip: That is what we tried to do with HUDAC.

Dr. Hill: I think the best way to do this is to submit to you the paper written by the Nova Scotia Ombudsman about municipalities and his jurisdiction over them. He submitted the paper at the last meeting of ombudsmen. I think we should distribute that paper.

I had better not quote without having the paper in front of me. I would like you to see Mr. Campbell's paper on

municipalities. It was devoted entirely to that and his coverage of it.

3 p.m.

Mr. Sheppard: Dr. Hill, on page 29 you state seven different jurisdictions you would like to get into. You must have one or two of them in the back of your mind that you would like to get your teeth into. Which one or two would you like to get your teeth into for a start?

I would not agree with you taking on all seven of these at one time for the simple reason that I think it would leave a bad impression out there with the public, giving you too much power or too big a bureaucracy. What about one or two of these? You must have some kind of feeling about one or two areas in which you would like to assist the people you are receiving complaints from.

Dr. Hill: If you want me to sink my teeth into something, I would like to sink my teeth into the whole review process because I really mean it when I say I have not made up my mind about which ones I would like this to expand upon and to cover. I do think it is extremely important, in all fairness, to hear from the people who are going to be affected. If someone was to ask me what I would do, I am interested in children's aid because I think native people have had a hell of a time in many cases in this area.

I am quite interested in that. I am interested in all those I have mentioned, but I would like to hear from them first to help me make up my mind which I would give priority to.

Mr. Sheppard: A couple there stand out.

Dr. Hill: The problem with that is I cannot prove it.

Mr. Sheppard: This is quite true, but I was thinking you would have more letters than anybody else, giving you some indication that there are more problems in one of these seven than the others. That was the reason I asked.

Dr. Hill: As I said, I would sink my teeth into the review process. Since I have opened offices in Kenora and Timmins, a rash of new problems has come to us from the native community that never came to us before. We never heard from them before and I am keeping a close eye on this, including things involving children's aid and other areas. Give me a little time for the review process and perhaps I can answer that for you.

Mr. Sheppard: When we met with you in September, and I was talking to a couple of the other members who sit on the committee, we as members of Parliament in our own constituencies--I am going to bounce this one off you and you probably will not give me an answer--did you ever think that we should be ombudsmen in our own offices?

For instance, if we were to get X dollars a year to look into it, we are ombudsmen at the present time because we get every

complaint there is. I get more complaints on one or two things, for instance, the Workers' Compensation Board, welfare or children's aid. There are two that really stand out in my riding. I have one girl who spends half her time or more on just those two things. Mind you, I have two part-time permanent because I do not have enough money to do it the way I would like to do it.

Dr. Hill: I have always viewed members as ombudsmen. All of them are really ombudsmen. We are complementing each other. I think it is, and indeed it must be, your function as a legislator to be an ombudsman for the people you are serving in your constituency. The question then becomes, do you have the resources to do the type of intensive investigation that we have?

Mr. Sheppard: No, we do not have the resources because we are allowed only X dollars, and every constituency office is the same. We are all on the same footing.

Dr. Hill: Exactly. We have the resources. That is our mandate, to do exhaustive investigations. By the very nature of your work, you do investigations. We have said that, and quite rightly so, but the question becomes, do you as a member want to get into that whole other area of exhaustive investigations?

Mr. Sheppard: It seems that every year we are doing a little more and we are not getting any more money to do it. I should not always say that; there has been a change in the past three months.

Mr. Pierce If that is true, bring the case to the Ombudsman.

Mr. Callahan: Try it; I would appreciate it.

Mr. Sheppard: Almost everybody is new on this committee. I do not know whether Mr. Shymko meant it that maybe we should be visiting some of the other ombudsmen, such as Sweden's, to see how they operate. I know you made a statement that nobody but you was allowed out of Ontario from the Ombudsman's office.

Interjections.

Mr. Shymko: Hawaii is very interesting.

Dr. Hill: I am not a legislator. You are legislators; you are accountable.

The real live need applies only for the time being to my office, and the only one on my staff allowed out of the country is me. It has nothing to do with you.

Mr. Sheppard: I understood that. There is no misunderstanding there.

There is one other thing. You mentioned 280 in 1980 and 771 in 1984. I can understand that, the Ombudsman's office being fairly new. Probably next year you will get another 300 because there are people coming into my office who say, "I was talking to Joe Blow down the street, and he said to go and see my member of the Legislature and he would contact the Ombudsman on my behalf."

Your office is advertising itself each day of every month of the year, and you are going to get more complaints every year. From what you have already told us, I am sure you will see an increase in the number of calls and letters coming into your office. I am not surprised to see you getting more letters each year from municipalities because your office is advertising itself with the good work it is doing each year.

That is all for now. I will have a couple of questions later.

Mr. Philip: This is a terribly large and complicated question. When we get into certain municipal jurisdictions, I am not sure how you expand without duplicating some of the things you are already doing. I am thinking of the Ontario Municipal Board, over which you have jurisdiction.

Some things might be worth your investigating with respect to cleaning up the process. For example, it seems to me the process that is being followed in the court of revisions for tax assessments is lacking. Oral decisions without any kind of written decisions or pattern, or anyone knowing what decisions have been made in the past with regard to similar cases--things like that are perhaps worth somebody's looking at, maybe the Ombudsman. I am not sure that there are not back-door routes for you to do that anyway, through the Ministry of Revenue.

When we get into all these areas, it seems to me it becomes so complicated that what we need first is some fairly extensive research prepared for the committee, both on what is happening in other countries and, if you want, a position or study paper that could be shared with the public. Following that, perhaps in the same way as led up to the Family Law Reform Act, there could be a variety of ideas presented in a very nonjudgemental way, saying, "These are the kinds of things we are looking at."

Following that, it seems reasonable for the committee to travel around the province or perhaps, prior to that, to certain jurisdictions outside the country which may have experimented, to try to find out on a hands-on basis exactly how some of their systems that look so good on paper are actually working at a grass-roots level.

I have always found, with some of the academic papers that come out, when you actually get on the street you find out it is different. We saw that with the select committee on the highway transportation of goods. Academic papers said deregulation did not mean anything, and then we found out when we got to Britain that the unions ran everything anyway; so they had a regulatory system. I am referring to instances such as that.

It seems to me we should set up a process of investigating without being judgemental. I think that is what the Ombudsman is basically asking for. I do not know what the implications are of moving into municipal jurisdiction. For example, I do not know how much hostility there will be out there. If we tried to meet a need, even if it existed, without that kind of study and dialogue, the Ombudsman might be ineffective anyway, because of the opposition that would occur through misunderstanding or whatever.

3:10 p.m.

I think a study and hearings are necessary to do two things. One is to find out the facts, which we have not done, and the other is to prepare the way for an understanding so that, if we move towards expanding the authority of the Ombudsman, he is not met with hostility based on ignorance or fear, fear probably being more the case.

I agree with Howard Sheppard that you simply cannot take on the world overnight. It seems to me that you have to look first at where the needs are and then rank them and start worrying about some kind of phasing-in process.

It seems to me, in a gut feeling, that since we do have a provincial Ombudsman, perhaps one of the things to weigh would be what areas of provincial jurisdiction does he not already have authority over. We should look at that before we start moving in on municipalities and so forth.

We do have some jurisdiction over hospitals, for example. We do have jurisdiction over the new home warranty program. We do have some jurisdiction over family services and that kind of thing. Those may well be the areas we should look at before opening it up to municipalities and some of the other things.

The other principle I feel very strongly about is that you should not have more than one shop to go to. The more people out there who need help, the more different offices they have to go to, the more confused they get. Unless there is tremendous hostility out there against the provincial Ombudsman, I do not think there should be municipal ombudsmen, because you would have different standards and you would have people confused. They already come to me, and all of you, with municipal problems. A lot of people do not understand the difference between federal, municipal and provincial governments. Wherever you can, it is better not to duplicate ombudsmen.

I think the federal government has made a terrible error in having a whole bunch of ombudsmen for different things--no overall Ombudsman, but a freedom of information commissioner, an army commissioner, a language rights commissioner and so forth. The poor citizen says, "I do not know."

The guy who does not have the lawyers does not get the service because he does not know. The guy who can afford to go to see Mr. Bell--he, of course, charges his appropriate fee to people off the street, I am sure--of \$150 an hour rather than the \$75 we are getting him for. He knows where to direct them, but the guy off the street does not know where to go.

We should look at establishing that, if possible, there should be one Ombudsman's office for the province and divisions to that so people can get slotted into other divisions when they go into the Ombudsman's office.

We should set up a study of what the jurisdictions and needs are. We should consult with people at the grass-roots level:

children's aid societies, social planning councils, community information and legal service offices, MPPs' offices and their riding office managers, hospital boards, ministers, priests, family health clinics, plus the public--all the people who are out there at the grass-roots level, whoever is delivering service out there. Then we should come back with a report towards a slow and gradual phasing-in of an expansion in the directions that we think might be appropriate.

If you do that, then I do not think you get yourself into the credibility problem that was referred to earlier. It is perfectly legitimate for this committee to say: "There have been all kinds of proposals to expand the power of the Ombudsman. We do not happen to think that at this point in time--not making any judgements for the future--he should have authority in this area. But we do think he should have authority at this point in time, under this society's set of conditions and these financial restraints, in that area."

That would be understood by the public and it would be a worthwhile exercise that not only we would profit by; ombudsmen throughout Canada and maybe even the world also would profit by that.

Mr. Callahan: Hawaii.

Mr. Philip: Hawaii has already expanded it. I think that is one of the places, of course, we have to study carefully.

Mr. Morin: And Fiji.

Mr. Philip: In our report we should start initiating the study.

Mr. Baetz: I would agree with a lot that Mr. Philip has said. Of course, he is simply expanding on some similar thoughts started by Mr. Callahan. I think a consensus is emerging here that, rather than address our examination to municipalities generally, we should look at some other specific areas, such as hospitals or children's aid societies.

Of all these other areas, I would like to make a special pitch to take a good look at the children's aid societies. I can understand why they are not under the Ombudsman's jurisdiction at the present time. Theoretically, they are nongovernmental or quasi-governmental organizations or whatever. Children's aid societies, by the very nature of the work they do, would be a very important area of work for the Ombudsman.

As well, because of the relationship that children's aid societies have, they are sort of out there in no man's land. They are not responsible to the local government, and in a way they are responsible to the provincial government only through the Ministry of Community and Social Services. They are presumably responsible to their own boards, but we so often hear that their own boards are not very informed or are weak and so on.

The other thing is that by this time they probably get about 99 per cent of their funding from the provincial government; so much of what they do is regulated by provincial legislation.

For all these reasons, if we are going to go at this in a segmental approach, I would like to see an examination of the possible inclusion in your jurisdiction of the children's aid societies. I would like to see them at the top of that list, because it is an area that is loaded with controversy, and decisions are made that are very troublesome at times. We have had some very infamous cases that have hit the headlines, but beyond that there are thousands of other cases where I suspect the Ombudsman's monitoring of the scene and his intervention would at times be very valuable.

Mr. Philip: May I ask you a question? I do not want to be controversial, but is it your gut feeling that if the Ombudsman had had authority over children's aid societies, the recent fiasco between Frank Drea and one of the children's aid societies would not likely have escalated in the way it did?

Mr. Baetz: It may. Which one are you referring to? There were several. Sorry about that, Frank. Which one was this?

Mr. Philip: The one that flared up in the Legislature for weeks in a row. I am not the critic of that ministry.

Mr. Shymko: Kenora.

Mr. Baetz: I think so. There are ever so many cases where, for example, the press gets involved. There is also always the question of where to turn. The local board often does not know what the issues are, and the local government says: "We appoint only two or three members to the board of the children's aid society. Do not involve us." In a sense the Ministry of Community and Social Services can wash its hands and say, "We set the guidelines, but the societies have to operate within these broad guidelines."

I think there is a very rich field for the Ombudsman there.

Mr. Callahan: You do not have any zoning appeals coming up before the Ontario Municipal Board in the next little while, do you?

Mr. Baetz: No.

Mr. Callahan: I am glad to hear that. I am going to give Frank a call.

Mr. Philip: That is right. We have to appear before him from now on.

3:20 p.m.

Mr. Poirier: Mr. Philip, I agree with you. At one point I think you presented a very good side of the medal for having one place to address yourself. I think we also have to address the other side of the coin. With the current situation, I look at quality and quantity of service, delay time, the number of staff and budget. As you become better known--I am not saying you are not well known now--you can rest assured that your mail clerks are going to have quite a load to bring into your place in the future.

The other side of the coin is that when you have an Ombudsman who is specialized in a certain domain, as much as it may confuse Mr. and Mrs. Average Citizen of Ontario, at least that Ombudsman has an area of specialization. The sheer volume of load is such that when I look at section 22, the last sheet, your list of complaints and information requests for the fiscal year, you are talking about 12,000 or 13,000 in all.

I have sat here for almost two weeks now, and I see the delay of time, for example, to get not an interim solution but a final solution. I am very worried, as we were saying in the beginning, that justice delayed is sometimes justice denied. I concur with Reuben that before we look somewhere else, we might as well look into what we can do to speed up the process for what we already have as a first concern.

I have 19 incorporated municipalities in my riding. I have served as an ombudsman for municipal matters more than enough, thank you, in the past 10 months since I have been elected.

Mr. Philip: They always think the new guy on the block is going to solve all their problems.

Mr. Poirier: Exactly. I am still getting 900 phone calls coming in every week.

Mr. Philip: Your predecessor probably handled the same cases and found out they were unjustified.

Mr. Poirier: It is down to 900 now.

I am very worried about the quality of service. If we compare your operations with operations everywhere else, when you consider per capita costs for the number of citizens within your jurisdiction, I would want to have a very good look at that.

It is very important to consider, on the other side of the coin, that if the Ontario Ombudsman's office should spread itself too thin, you might have so many hares to chase that you would not catch any. I would be very afraid of that. It could be bad publicity for the Ombudsman's office. I support entirely the work of your office, and it has to be very well preserved so it does not slip downward because of added load.

The other part is that the smaller your office can be, in principle, the better you can assure quality of service. If tomorrow morning you had all seven of these jurisdictions added, how many people would you need? You would become a very big office.

Mr. Callahan: You might need an ombudsman for the Ombudsman.

Mr. Poirier: As a former civil servant myself and now a politician with the provincial government, I know from what I have seen in the past two weeks that a heck of a lot of work is done to cut down seven-year cases and whatever. As somebody mentioned, we will all go and see these people in senior citizens' homes to give them the results of the deliberations we are doing right now. I am very concerned about that.

With all due respect, Mr. Philip, I think I fully understand what you are saying, but we have to consider seriously the other side of the coin.

Mr. Philip: May I just respond to some of those concerns? It seems to me that the present Ombudsman, or Eleanor, has presented information that showed in some of the very long-term cases there were explanations for the long delays. I am not sure that any Ombudsman, be he local, be he a commissioner of languages or whatever, would be able to change those.

There are delays in my office that can be explained. I have people who call up and ask, "Why is it three months?" I say: "I have written to your doctor four times. He still has not sent me the medical evidence so I can evaluate whether we go to the board or not." I think those are--

Mr. Poirier: Beyond our control.

Mr. Philip: Yes. There is nothing that suggests to me that if an Ombudsman has five divisions, any one of those divisions is going to operate less efficiently than it would were it shelved off as a separate Ombudsman existing physically in a different building. As a matter of fact, I would suggest there might be economies in having them all together. There are economies in terms of computer and data processing. There are also economies in terms of being able to shift staff from one division to another because staff do get stale doing the same type of work.

I think there are also economies you can realize that we may discover a need for. I think Dr. Hill knows what I am talking about. I do not want to get into any details before the legislation is brought down, but I suspect there is going to be a new Ombudsman, or a commissioner, appointed for one particular thing here in Ontario. My suspicion is that the case load may not be all that large in that particular area.

If you are going to set up a new office, say for freedom of information, then you have to say: "What is the case load going to be? Do you set up a whole new bureaucracy? What is the cost of that in comparison to setting up division 6 under the Ombudsman?" I do not know the answers to that, but I think it is the kind of question you have to ask.

Is there really an economy in setting up a separate Ombudsman for universities as compared to community colleges, which we now have? These are the kinds of questions. I do not know the answer to that.

I am concerned that the average guy with a grade 4 education, and who does not speak English very well, does not know who to go to for help. There should be one stop at which he can get that kind of help and not be shuffled around over and over again. We would have to examine that.

Mr. Poirier: But you do agree that the side of the coin I presented is also worth looking into?

Mr. Philip: Oh, yes.

Mr. Poirier: Just at the straight municipal level, we have 838 municipalities. You are talking a heck of a lot of--

Mr. Philip: If you are going to move into the municipalities, it seems to me you have to be fairly restrictive about what you are going to look at. I do not want to prejudge what we will find. You are not going to duplicate the work of the Ontario Municipal Board, at least not at the grass roots, the early stage level. Hopefully, you are not going to duplicate the work of the planning commissioner or whoever.

What you may have to do though is have some jurisdiction to see whether or not there are violations of certain provincial statutes with regard to municipal complaints. You could probably still do that. You may want to restrict the kinds of things that the Ombudsman would have the power to investigate municipally. I am not sure we want the Ombudsman redeciding whether or not Mrs. McGillicuddy's cement sidewalk takes a higher priority in being replaced than John Brown's down the street because it has sunk 3.5 kilometres and his has sunk--you know the kinds of things.

Mr. Callahan: Kilometres?

Mr. Philip: Metres. Never did learn the--

Mr. Henderson: --the Liberals brought in metric, Ed.

Mr. Philip: That is what happens when you spend too much time close to Peterborough. Subconsciously, you become anti-metric.

Mr. Callahan: I would hate to have you come over and dig a hole in my back yard.

Mr. Sheppard: (Inaudible).

Mr. Philip: The sun sure was not shining the last few times I have been up there, Howard.

Mr. Poirier: In that sense, could I get your reaction to what I have brought forward?

3:30 p.m.

Mrs. Meslin: I was waiting patiently for Mr. Philip because he was saying good things.

I think what you said has validity in terms of the quality of work and the time. However, you have to realize that a great part of the delay is outside our control. We have tried to show you that in our statistics. However, having said that, with this new reorganization we are trying to see if we can even help to control that.

In addition, when you look at an expansion of jurisdiction, you have to consider that you now have somewhat over 100 highly qualified people who would not take a great deal of training to

begin to do new jurisdictional complaints. Certainly you may have to expand depending on how much jurisdiction you would get, but if you had to set up ombudsmen for different things, you may also find that you are going to denude this Ombudsman, because these are the qualified people. Just as when the complaints commissioner, the pilot program started, numbers of people came to our office because we were the people who knew how to do it, we knew how to carry on investigations. For a time there, we had to retrain new people. You have a qualified cadre of people and I think you have to realize that they are addressing these problems and are able to cope with them.

Mr. Callahan: Could I have a supplementary. You addressed the question of the complaints commissioner and reviewed all of the areas of--I gather you are talking about police?

Mrs. Meslin: Yes.

Mr. Callahan: Has that ever been considered as a possible add on, because what has happened is, we have had a local Toronto-area one. We have never had them done in the outlying districts and I have some concern that those facilities should be available.

Mr. Shymko: The reason is the municipal governments would not automatically get the municipal police forces under your jurisdiction.

Mrs. Meslin: I think it was not addressed directly, because that it is a Metropolitan Toronto Police complaints function.

Mr. Philip: The Attorney General at the time also became Solicitor General fortunately, and I would love to write a book on that some time, and there was the set of coincidences that made that work very well. The rationale was that it was an experiment and I think also part of the rationale was that you had a police chief who was willing to go along with the experiment. I suspect if you really were a fly on the wall of the Attorney General-Solicitor General McMurtry's office, you would find a lot of the other police chiefs were so adamant, against anything like that, he probably figured it stood the best chance of working in Toronto. If he could prove it in Toronto he might expand it elsewhere.

I understand there is considerable opposition in the cabinet by certain cabinet ministers to having that kind of expansion of the Toronto police complaints thing into their areas.

Mr. Callahan: Are you the fly on the wall in there or what?

Mr. Philip: I have good contacts all over the place. I talk to people and listen to people. I understand there was opposition from certain areas by certain cabinet ministers to having anything to do with that in their area. It worked in Toronto.

Mr. Shymko: (Inaudible)

Mr. Callahan: Don't whisper Yuri, let us hear it. I will have to read the record to find out what he said.

Mr. Philip: It was not Reuben Baetz by the way that I heard. I am sure Reuben knows who they were.

Mr. Baetz: Could be.

Mr. Henderson: The first question I want to address is the question of a need for a standard jurisdiction. I see it rather differently depending on whether one is talking about an expansion of jurisdiction over bodies that are associated with the provincial government, but not quite as directly; in other words, public hospitals that are funded by the provincial government, universities that are funded by the provincial government, children's aid societies and so on.

It seems to me that it ought to be considered a little differently than extending it into what really is another jurisdiction, namely municipalities. It seems to me that the expansion of the Ombudsman's jurisdiction over these slightly less directly provincial government affiliated bodies, is going to be much less costly for one thing than looking at expanding it over all the municipalities and thereby municipal police forces and so on.

It also seems to me that the process is going to be different or the desirable process is different. I am agreeing with the point you people have made about economies. They are different, I think. It seems to me the process ought to be so in the sense I am not as convinced as some people that so much public canvassing and input is going to be necessary.

An argument can be made that our job, after all, as elected MPPs, is to reflect public sentiment and will. Particularly in the matter of the more limited expansion of already existing government funded, government related bodies, it ought to be possible for us to consider and perhaps have some consultation and discussion, but not necessarily go through an elaborate process of inviting and soliciting public input. I am not as confident of that view when it comes to municipalities. I do not know about that.

I want to make a particular pitch for universities to come under the Ombudsman's jurisdiction. I suppose each of us, by virtue of his background, sees a slightly different side of it. However, my experience with universities is they are notoriously autocratic. I am speaking of the administrative side now, not the academic. They tend to be unresponsive, unilateral, arbitrary and very hierarchical. They are inclined to be arrogant, at least some of them are, and reluctant to be questioned or examine their own decision making process.

I am sure it is partly because particular issues arise that need to be addressed and to which the Ombudsman could bring a greater measure of social justice, if you like, and partly because

the very process of expanding the Ombudsman's jurisdiction will make for a more responsible and responsive mode of administration in universities, I feel very strongly we ought to consider universities, and not only community colleges. After all, community colleges are newer. They are much less carved in stone with respect to their administrative mode. It seems to me if community colleges ought to be under the jurisdiction of the Ombudsman, then universities sure as heck ought to be.

Again, I would emphasize I am not talking about the academic part of the universities. I am not suggesting we ought to encroach on academic freedom, in which I believe, but universities make a big distinction between the administrative side of their operation and the academic. I do not see why we cannot make the same one and say the administrative part of the university function ought to be under the jurisdiction of the provincial Ombudsman.

With all respect to Dr. Hill, who may have a slightly different kind of experience and another point of view, I am not satisfied a university's own Ombudsman can do that job. We have seen only this week in this room how difficult it is for somebody who is part of a particular organization, however objective and unbiased he is supposed to be, really to be so. I am speaking now of the medical people who appeared here. I just have to feel a university Ombudsman is going to find himself identifying with the prevailing mode, philosophy and ideology of his university. I have to think that would be so even if he reported to the university board as opposed to its president.

I am agreeing also that I would like to see one Ombudsman in provincial matters rather than each university having its own. The direction we ought to go is to an extension of the jurisdiction of the provincial Ombudsman over universities. For reasons of economy and effectiveness in the role, and the part of the role that deals with promoting a more humane and responsible administrative mode in universities, I think it would be better to do that.

In summary, I am suggesting some more simple and straightforward process be brought to bear on the matter of extending the Ombudsman's jurisdiction over universities, hospitals, maybe children's aid societies and the Ontario new home warranty program.

I would like to see us get on with consideration of that and I make a particular pitch for universities. I feel I know less about municipalities, but perhaps that can go a different route and perhaps a more elaborate and longer route.

3:40 p.m.

Mr. Sheppard: As a supplementary to that, the member brought out a point that I was hoping Dr. Hill would bring out. I could probably say the same thing Mr. Henderson is saying about public hospitals, or about municipalities or the farm products marketing boards, with which I am more familiar than I am with some of these others. But I was interested in hearing your comments in regard to universities. /

Mr. Philip: I guess the question is, where do we go from here? Maybe we have to deal with the resolution of this in camera.

Mr. Bell: May I raise a couple of other issues? Dr. Hill, do you know or do you have a sense of what the Attorney General (Mr. Scott) or his ministry feels about the suggestion you have made that after 10 years we need to talk about it, study it or do something to it to make an informed decision? Specifically, do you have a sense of what the Attorney General's position would be on this committee's participation in the way that you have addressed?

Dr. Hill: No, I do not. I have had a number of meetings with the staff of the Attorney General's office and, indeed, the Attorney General himself. He has not said anything one way or the other about it. I am sure he has some ideas on it, but I have not asked the question. I cannot answer that.

Mr. Bell: Specifically, you do not know what his position is about whether there is a need to study the issue?

Dr. Hill: No, I do not know that. I could guess what it would be, but I do not want to put that guess forward. I have a pretty good idea what he is thinking in this situation, but I would rather not comment until I have had a chance to ask him.

Mr. Bell: I guess, members, the question is for you further to debate, probably in camera, whether and to what extent.

Mr. Philip: I have one other question of Dr. Hill. Do you feel that your staff combined with our staff could prepare, during a two-month period, the kind of thing that is done before complicated legislation comes out, such as a study paper or a public paper that would say: "Here are the issues for study. Here are some of the things that are done in other countries"? Would that be the kind of thing you would see being done jointly between your staff and perhaps Merike and John or whatever other resources we can get from legislative library research?

Dr. Hill: We want to give every help possible; I have already committed myself to saying we want to be helpful. But there are resource implications. We would have to pull some staff off, perhaps; it would cost us a few bucks and it would cost you some money, too. I would like to see what it would cost to do that. I do not even know whether we can do it in two or three months; it may be a little longer than that.

There are cost implications, but let me say straightforwardly that I commit my office to working with you to study the problem. The question is, how much and how many? I do not know yet.

Mr. Bell: I can respond to that further. If the green light is given by whoever is to give it--this committee alone, the House, whatever--it would be done. In fact, it should be a prerequisite before you get on a task like this. You have to settle the issues and settle whom you are going to speak to.

It would be within my contemplation, if it happens, to have something prepared, and at the first organizational meeting you settle on what you are going to do. I am not sure it would entail that type of in-depth analysis of other jurisdictions as part of that paper, but it would address other jurisdictions to the extent that you can make a decision on whether you want to pursue matters with them.

There is precious little, I should tell you. The last time I had occasion to see what was available by way of literature, there was precious little on what you are talking about. Michael, you might be able to comment.

Mr. Zacks: There is not a large body of literature on that issue.

Mr. Bell: Scandinavian countries have not been that concerned about the impact of their jurisdiction over municipalities, beyond saying that they have it but they do not do a lot of it. That type of research is not available and I do not think it would be terribly useful.

Mr. Zacks: There are some anecdotal documents from various jurisdictions talking about how we investigate municipal complaints and that type of thing, but there is nothing around of a statistical, analytical or comparative nature.

Mr. Morin: There was one study conducted by a fellow by the name of Murphy. I believe it was done in 1975 or 1976 at the request of Arthur Maloney. Perhaps some of you municipal people would remember him. It was just local. Was it Brantford or Brampton? I cannot recall.

Mr. Zacks: We tried to track it down. I have heard of the document, but it has gone to the great beyond.

Mr. Morin: Another was written by Dr. Rowat, a professor at the University of Ottawa. I think there are two documents available.

Mr. Philip: I envisage the kind of thing that was turned out prior to the family law reform bill, something that can be sent to whatever groups may be interested so that they understand, (1) any background that is available on the issue, and (2) what the issues are the committee is going to look at.

Mr. Bell: That could be done.

Mr. Philip: That has to be printed well in advance of the committee holding hearings.

Mr. Callahan: As to sources, I wonder whether the Canadian Bar Association and its various subsections would look at that issue and give us some idea about that. These are the guys who are in the subsections that deal with the specific areas we are all looking at who can tell us, "Maybe there is a need for the Ombudsman to be in that area and maybe there is not." That would be a quick way of getting a précis of where we should go.

Mr. Callahan: I notice in his report that the two times he addressed the Canadian Bar Association about this issue it has resulted, on one occasion, in the Ombudsman's office and on the second one, it resulted--I cannot recall what it was in the report.

Dr. Hill: A unanimous vote by the--

Mr. Callahan: It is obvious it is an issue in which they are deeply concerned, and they are the experts who deal with the day-to-day activities and frustrations of this issue and might be able to give us a window on what we want to find out.

Mr. Philip: I do not share the views of Bob Nixon about lawyers.

Mr. Callahan: Does he not like lawyers? Is that why I am not in the cabinet?

Dr. Hill: The answer to you is, yes, Mr. Philip. We will help and we will find staff somewhere, but I would like to work out the details of it.

Mr. Philip: I do not think any one profession has the--

Dr. Hill: We will do it.

Mr. Sheppard: This is probably a loaded question. If you were to take on these seven, you might or should be able to give us some kind of ball-park figure as to what extra staff you would have to have to look into it, with the experience and work load you have had.

Dr. Hill: If we agree on what should be done, I would try to do an impact study to let you know what the impact would be on our budget and our staff. I cannot tell you off the top of my head. There would be an impact and we would certainly have to be able to say what it would mean in terms of staffing and money. I cannot tell you now.

Mr. Sheppard: If you have a budget, you know what you are going to spend.

3:50 p.m.

Mr. Hayes: Every one of us could probably sit here and set out a lot of pros and cons for any of these, such as the municipalities or the children's aid societies. I sometimes have a little burr to pick with conservation authorities as to the way they make some of their decisions. Perhaps I would not want another body coming in there either. I do not think we can say we should or should not expand the jurisdiction of the Ombudsman. It is going to take a lot of study before we can really come up with an answer.

I would like to ask one question for information. You say there are 771 complaints about municipalities. Could you give us an idea of how many of these, for example, would be Metropolitan

Toronto compared to some of the rural areas?

Mr. Zacks: We cannot give you that. We would have to do, in essence, a manual count.

Dr. Hill: We could give it to you but not right here.

Mr. Hayes: I do not want an exact figure.

Dr. Hill: I would imagine, just guessing, you would have a fair number from Metro. It is the largest municipality. The larger municipalities would obviously give you the larger case load. Off the top of my head, I could not tell you. We could find out. We would have to do a manual search. We are trying to put stuff on computers. We could get that information for you, but we do not have it at hand.

Mr. Hayes: What type of complaints would you get? Welfare? Planning?

Dr. Hill: About five or six categories.

Mr. Zacks: Snow removal, garbage pickup, zoning issues; it is everything.

Mr. Hayes: I might make a suggestion here when we talk about how we are going to finance this thing. I think we could probably find some money from the Workers' Compensation Board with some of the commercials it has. Maybe we can reduce a number of those and put some money in where it will really work.

Mr. Chairman: Is there any further discussion?

Dr. Hill: Yes, I want to make a statement. I still consider myself to be a relatively new Ombudsman even though I have been on the job for a year and a half. I want to say to this standing committee that I have found the deliberations most helpful to me. You really went into depth, great depth, into everything. By doing so, you gave us a lot to think about and gave us a lot of guidance. I appreciate the process and it has been awfully helpful. I thank you for it.

Mr. Chairman: Does the committee now want to go in camera, or will we do it in the morning? Okay, we can do that in the morning.

Mr. Callahan: Mr. Chairman, before you adjourn, at the earlier recess I suggested that perhaps we should hold a celebration. There is someone in this room who has embarked upon a life sentence. I arranged it up in our caucus room. There are drinks of various types of firewater. I would hope everyone would come who can.

Mr. Poirier: Matrimonial water.

Mr. Sheppard: That is right now?

Mr. Callahan: Right now.

Mr. Sheppard: Right now, if the chairman will join us.

Mr. Chairman: I am going to be busy.

Interjection: The condition precedent is the chairman's attendance.

Mr. Callahan: We cannot have a party without you.

Interjection: We can, but we do not want to.

The committee adjourned at 3:54 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ORGANIZATION
MONDAY, JANUARY 13, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Pierce, F. J. (Rainy River PC)

Shymko, Y. R. (High Park-Swansea PC)

Also taking part:

McLean, A. K. (Simcoe East PC)

Clerk: Decker, T.

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, January 13, 1986

The committee met at 3:39 p.m. in room 151.

ORGANIZATION

Mr. Chairman: I call the committee to order. It has been suggested we should discuss the proposed trip to northern Ontario. As we are all aware, we had planned to go from February 2 to February 6. The way the situation is in the House, that is not only questionable but also it has been suggested it should be cancelled because we have to make arrangements with the members in the areas and with the people we are going to visit. Because of time it takes to communicate with some of those people, it was felt we did not have enough time.

Mr. Philip: What is the alternative suggestion? I find it unusual that we could not go none the less. Since the committee is representative, why can we not go while the House is sitting?

Mr. Chairman: I guess we could if we got the authority of the House.

Mr. Philip: Did you try getting the authority of the House leaders?

Mr. Chairman: No, I did not.

Mr. Philip: I assumed that was understood and it would have been done.

Mr. Chairman: Having been involved with several select committees, I had the impression they do not travel while the House is in session. Maybe it is an unwritten rule around here, but that was the impression I had. I did not discuss this with any members and that is one of the reasons we are meeting today.

Mr. Philip: We are a standing committee. I do not know whether that makes any difference.

Mr. Chairman: Yes, that is right.

Mr. Philip: Having cancelled it and notified the people, I guess there is nothing we can do about that.

Mr. Shymko: Is it definite we will be sitting from February 2 to February 9?

Mr. Chairman: You know as well as I do that nothing is definite around this place. However, it appears we may be sitting.

Mr. Shymko: Have preparations been made with respect to people in the area who were to organize an agenda for us?

Mr. Chairman: Yes. We had a committee.

Mr. Morin: Mr. Pierce, Mr. Hennessy and myself had a meeting. We were to make the various contacts. If we can use past experience as an example, we are already too late to organize that trip. We were on time when we got together. However, unless somebody makes a sort of reconnaissance beforehand and meets with each chief to tell him we will be there by a certain time, we may as well forget about it. It is too late now.

Mr. Shymko: From the indication I have, it looks as though we may be sitting in February, probably until June, with a break in March. I would suggest we notify the people in northern Ontario who were organizing various activities for us that it is being cancelled.

However, the principle of the trip is something we should decide on now. It may be during the summer or early fall. It is very important that the members of this committee should travel and see some of the problems associated with its work in northern Ontario. Maybe we should discuss that.

Mr. Philip: I agree with Mr. Shymko. I think it should be rescheduled. It is fairly clear the Legislature will not be sitting all summer. Therefore, I think it would be safe to reschedule it, perhaps for early September. I think the same subcommittee should deal with that and schedule it. It should be made definite this time.

Mr. Morin: Let us make sure we organize it prior to the hunt.

Mr. Philip: Those are the considerations. You people know the territory. I think Mr. Morin and Mr. Pouliot are very familiar with that area. What I would like to emphasize is that I hope we go up at a time when it does not look as though we are simply there to--how can I put it in a tactful way?

Some of the native peoples have the feeling that certain public servants use various types of meetings as excuses for getting in free fishing trips. I am not against fishing. I probably enjoy canoeing more than anyone. However, I think it should be done in a way in which we are sure they are available and, if possible, that it not appear as though we are getting any freebies out of the thing. That was one of the advantages I saw in February and one of the reasons I suggested February. I thought nobody could possibly think we were going up there for any reason other than to meet those people. I will leave it to the subcommittee and ask that it report back to the committee on the dates. We will accept its recommendation, subject to any great conflicts.

The other thing I suggest the subcommittee report back on is this: it seems to me reasonable for us to open it up to some members of the press, particularly some of the southern press such as the Globe and Mail and the Toronto Star. It would be an opportunity for them to report on what is going on in the north

and on the work of the standing committee on the Ombudsman vis-à-vis native peoples.

I think we had a Globe and Mail reporter, Robert Stephens, along last time. I think we should open it up to the press again this time. Mr. Chairman, perhaps at an early stage you should advise the press gallery of the proposed date and ask whether any of them would be interested in coming with us.

Mr. Chairman: That sounds like a good idea.

Mr. Philip: Let the subcommittee deal with it. I trust its judgement.

Mr. Shymko: I am sure Mr. Philip will agree with this. I found the visits to institutions most educational and fascinating, a true learning experience. I am referring to the psychiatric institutions, the correctional institutions and, in particular, the visit to the Indian reserves, meetings with the chiefs and the band councils. It may take some preparatory work in the area to arrange such visits. However, they should be part and parcel of our trip, rather than having the municipality host it in Kapuskasing or Timmins.

There should be more about areas of concern with which the Office of the Ombudsman deals, particularly correctional institutions. In the native area, I know that in the area of children's aid societies there is a move to autonomous bodies. Perhaps we can meet someone to discuss the services from that ministry. I think this is a very interesting and unique experiment that we as a provincial jurisdiction are doing with children's aid societies. We should see that. It is not necessarily related to the function of the Ombudsman.

Mr. Philip: One of the things that hit us last time was the whole area of the problems of housing in the north. I do not think we have scheduled that. We found out about some of the housing problems by accident. Perhaps in setting up the agenda, the subcommittee might look at that. We could meet with local housing people and deal with it.

As you probably know, the Ombudsman is preparing a special report that is a systemic analysis of housing problems in Ontario. Therefore, as part of our tie-in with that report and as one of our focuses, it might be useful to try to focus on the supply of housing in the north: geared-to-income housing, assisted housing and housing for seniors. The members who are from there will know what we should be looking for. Maybe they can direct us and make arrangements for us.

Mr. Shymko: Is there any idea when? I mentioned the summer or early fall.

Mr. Morin: Early fall.

Mr. Sheppard: September is the best time.

Mr. Morin: Early September would be excellent.

Mr. Shymko: We have estimates. We have work that has to be done here with the Ombudsman committee.

Mr. Philip: We can do that in--

Mr. Chairman: Would the first week in September be good?

Mr. Morin: Yes. First, I will check when the hunt starts and also when the best time would be. I suggest sending someone there to do the--

Mr. Shymko: Legwork.

Mr. Morin: --legwork. That is what I did the last time and it pays off. If I had the time, I would be very glad to do it, but it takes a week to meet with each chief to organize the whole thing on the spot and to let them know who will be there. That is the only way. I can do it; Mr. Pierce could possibly do it. However, you have to go there. If you recall the last time, it was all organized.

3:50 p.m.

Mr. Shymko: Yes. You did a fantastic job.

Mr. Morin: But it was all cancelled at the last minute, and to do that again is costly. I leave that to you.

Mr. Philip: You have the basis of an organization already. Why do we not ask Gilles and Jack Pierce to do some of that organization for us?

Mr. Chairman: Are all in favour of that suggestion?

Agreed to.

Mr. Philip: There is another issue arising out of this. If we can come to an early date, I would find it useful to tell the Ombudsman that we understand why he could not accompany us in the week of February 2 but that, since we are doing it six months later and since he is going to the north on his own with his staff around that time, we would like him to consider accompanying us at that time. We are supposed to be working not only to monitor the Ombudsman but also in co-operation with him, and I think it would be a big drawing card for the people up there to have the Ombudsman with us.

Mr. Sheppard: Has he not been up there?

Mr. Shymko: He has already made a few trips individually. We were not inhibited when the Ombudsman's office was there locally with Gilles, whose function it was to discharge the responsibilities of the office in northern Ontario. That was understood.

However, you become a little inhibited when the Ombudsman is there with you. We are a committee that monitors the work of the

Ombudsman, and I would feel more at ease if we were there by ourselves and perhaps even voiced some of our concerns or criticisms of the operation of the Ombudsman's office.

Mr. Morin: Without embarrassing the Ombudsman.

Mr. Shymko: Without the embarrassment.

Mr. Morin: You mean without embarrassing the Ombudsman himself.

Mr. Shymko: Exactly, in questioning people and so on.

Mr. Philip: It is a suggestion, and I will throw it out to you.

Mr. Sheppard: How long will it take to organize this? What was it last time? Was it about six weeks to two months? It took us a week to organize the trip for the first week in February, but it was last September or October when we agreed to go up north, was it not?

Mr. Morin: When we had our last meeting?

Mr. Sheppard: Yes.

Mr. Morin: It was in September. However, it did not take long. We had three members who knew what to do. We had a meeting; the briefing was done. We could easily prepare this two months ahead of time. If we prepare it too long in advance, things change. Sometimes they have an election on the reserve, so you have a brand-new chief, or somebody is sick.

Not only that, but time in the north is not considered in the same way as we consider time here. We say 10 o'clock; it could be 12 o'clock there. You take life as it comes.

Mr. Sheppard: They never get in a hurry there.

Mr. Morin: No, and I respect them for that. That is their way of living, it is their culture, and we must be very flexible and adapt ourselves to those conditions.

I have seen many occasions where I was there at 10 o'clock sharp. The chief was not there and did not show up before two o'clock in the afternoon. I was annoyed in the beginning, but at the end I said: "What can I do? I am in the middle of nowhere and I have to accept it. I have nowhere else to go."

Mr. Philip: On this, one of the things I found disconcerting on the last trip--and it was disconcerting, I think you would agree, to some of the native peoples--was that we would get into a place and then have to say to the group we were meeting: "We are sorry. We have a flight. We are due at such-and-such a band at two o'clock this afternoon. In order to have lunch and get on the plane, we are going to have to go, but we appreciate your concerns." Meanwhile, five or six people who were at the meeting had not had a chance to say their piece.

I wonder whether it is worth while to look at the agenda. I have no objection to spending 10 days there, particularly in September. It is not as busy a time for me as this time of the year. I would rather spend 10 days and not be rushed.

I do not want to be sitting around wasting time, but I thought trying to see two groups a day on the last trip to the native peoples was pushing it. I would rather have time to spend talking with them and walking around their village, because it takes a while for them to warm up. I do not want them to feel we are rushing them, that we are simply in and out again. The week was too rushed the last time.

Maybe we should look at eight, nine or 10 days, whatever is needed, and not have as hectic a schedule. I think the opposite was true for some parts of the trip, which I thought were a waste of time.

Sitting down and having cocktails with the president of the chamber of commerce might be quite interesting. I enjoy sitting down with people I have not met before, having a cocktail, eating a steak and so forth. The hospitality was nice too. However, we may have wasted some of our time. We could have had the same result with a quick briefing or presentation from them. This might be taken into consideration.

Mr. Shymko: I want to agree with what Ed said. It is not a question of extending it from seven to 10 days. When you have it for seven days, you should not pack in so much that you have to insult people by telling them you are leaving after two or two and a half hours. We were being rushed in areas and meetings that were crucial and important. At meetings that were irrelevant to our work, we had hours of wasted time. I agree with that. It is a good point. I support you 100 per cent.

Mr. Sheppard: You always have a certain amount of wasted time anyway because it is hard to schedule everything right on the dot.

Mr. Morin: There is the cost too.

Mr. Shymko: Travel takes time. Moving from one place to another takes half a day.

Mr. Sheppard: Were you on the last trip with the standing committee on general government that went to Grassy Narrows?

Mr. Shymko: No, I was not on that trip. That was the standing committee on social development, not general government.

Mr. McLean: Were you there?

Mr. Shymko: I do not think this committee is planning to spend time at Minaki Lodge. Was it the Minaki Lodge visit?

Mr. Sheppard: That was our own private business, though.

Mr. Shymko: This is not a committee that goes for luxury trips.

Mr. Sheppard: No, we did not go for luxury trips either.

Mr. Philip: Do I take it though that at the end of the trip, as a way of putting all our ideas together, we will be spending two days at Minaki to summarize everything that happened on the trip?

Mr. Shymko: Were you there?

Mr. Philip: I have never seen Minaki.

Mr. Shymko: Neither have I, but there are two sides to that proposal.

Mr. Chairman: What is the old saying? There are always three sides to every story: Yuri's, mine and the true side.

Mr. Shymko: We might have to criticize the operation of Minaki Lodge. I would like to see that perspective.

Mr. Philip: I am being facetious about Minaki, but it is important to set aside a day close to the end of such trips, not necessarily the week when people are trying to get back to their ridings, but within a week or so after, when committee members can sit down and brainstorm. The researcher for the committee could jot down some of their impressions and concerns and so on.

I find it difficult to write a report from memory six months later. When people are fresh and enthusiastic, while they have things under their saddle, so to speak, that they want to change or improve, that is the time to get it down. Then the report will be meaningful.

Therefore, I suggest--

Mr. Shymko: Minaki Lodge.

4 p.m.

Mr. Philip: In summary, I am suggesting:

1. That we book it now, get a specific time--probably the first week after Labour Day--and inform the press of it, and that the organization be set.

2. That it not necessarily be a week--it may be longer--but look at the schedule, and that particularly we not rush away from some of the native peoples.

3. That we look at the social events we had last time and not overdo them. It is fair to meet with the mayor and council in Kenora or Thunder Bay and that kind of thing.

4. That we schedule a day at the end, when things are fresh in our minds and we can brainstorm, to put things down so we can

write our report.

Mr. Shymko: With priority on the last point, I would imagine.

Mr. Philip: Yes, there is no point in our going on a fact-finding trip if we do not get that information down, include it in our report and get some positive changes as a result.

Mr. Chairman: Labour Day is Monday, September 1.

Mr. Philip: So we should be aiming at Tuesday or Wednesday, as a start. If we were looking at leaving on Tuesday, we could have that week and most of the next week up until the Friday. We could schedule it over a 10 day period which would include a day--and the day could be back here; it does not have to be at a lodge or anything.

Mr. Morin: It could be on a reserve. There are some nice beautiful spots.

Mr. Philip: Quite frankly, one advantage of doing it away from this place is that here, we are constantly interrupted. Even in this meeting I have notes to call people; one to make a call at 4 p.m. so I am five minutes late. I do not care where it is. We can all go to my cottage if you want--there is room for most of us there--and we could do it up there. It could be any place.

Mr. Sheppard: He cooks good steaks, too.

Mr. Philip: We shall have the local MPP for the area donate the steaks if I am donating the accommodation.

Mr. McLean: I am new on the committee. I should like clarification on the purpose of the trip and of the press being notified.

Mr. Shymko: Give him a copy of Hansard from last week.

Mr. Chairman: The purpose of the trip is to meet with various people in the north regarding the Ombudsman, find out what their problems are--and we know there are many--and see what we as a committee can recommend to the Ombudsman so he can better serve the people of the north.

Mr. Philip: It is to evaluate the service the Ombudsman is providing.

Mr. Chairman: The more press we, as an Ombudsman committee, can get for ourselves and for the Ombudsman, the better. Before I became a member of this committee, I did not understand the role of the Ombudsman nearly as well as I do now. I had to admit that. The role of the Ombudsman is not unlike the role of a member. It is a very important role and it is important that the people of the north recognize that role and are able to appreciate and take advantage of it. Mr. Morin would be able to explain it further because he has worked with those people in the

north and has an appreciation of their problems.

Mr. Sheppard: When we sat on the committee last September, I think it was only one in 16 or 17 people who even realized there is an Ombudsman in Ontario. I think this is another reason they would like the press to go so the public out there can read about it and hear about it. If you mention the Ombudsman to a lot of people in my riding, they will say, what is that? They never heard tell of it before.

Mr. Chairman: Unfortunately, that is true.

Mr. McLean: The questions have been answered.

Mr. Philip: Are we agreed then that we are aiming at Wednesday, September 3 as the possible takeoff date?

Mr. Chairman: Is that agreeable to the committee?

Interjection: Sure.

Mr. Philip: We will look at the schedule and, if necessary, we should write the following week into our calendars, the Thursday or Friday. Is that agreed?

Mr. Shymko: We also suggest that the normal meetings of the committee on the Ombudsman be scheduled immediately upon our return, to continue with the work.

Mr. Philip: Why not finish up the estimates and do things like that in June or whenever the House adjourns?

Mr. Chairman: We have the estimates we have to discuss.

Mr. Shymko: Now.

Mr. Philip: Why not decide on this and then worry about the other. We may be able to do some of this during the small recess when the House adjourns. It could be the middle of March.

Mr. Shymko: I see. I thought we would schedule the normal meetings we have with the Ombudsman and the Ombudsman's report, the annual report of the recommendation-denied cases which are always scheduled in September, immediately following our trip.

Mr. Chairman: We may have to take a look at that.

Mr. Shymko: I do not think they will have this ready--

Mr. Philip: We did not have any this September, did we?

Mr. Shymko: Yes, we did. Sure, we sat for two weeks.

Mr. Philip: Is there a backlog of those already?

Mr. Chairman: No, there may be some now but you may recall that--

Mr. Philip: I mean since then.

Mr. Chairman: Not that I am aware of. Do you know?

Clerk of the Committee: Everything pertaining to the Ombudsman's last annual report was dealt with at our meetings in September. John Bell is still working on the draft. Mr. Shymko is referring to the Ombudsman's 1985-86 report--

Mr. Shymko: The 1985-86 report, yes.

Clerk of the Committee: --which we would have to consider next September.

Mr. Shymko: Yes.

Mr. Philip: That is fine.

Mr. Shymko: As a follow-up, I had an impression that Mr. Bell had completed his work. Is there any indication when his report will be ready, at least a draft, for us?

Mr. Chairman: I understand that he has not quite completed it. It should be available shortly.

Mr. Shymko: Okay.

Mr. Sheppard: I have one item under new business if you are finished with this.

Mr. Shymko: Let us vote on the suggestion.

Mr. Chairman: Are the committee members in favour of going north the first week of September?

Agreed to.

Mr. Chairman: The length of time will depend on the agenda but would you be prepared to go for at least 10 days?

Interjection: Agreed.

Mr. Shymko: I would not say "at least;" for a maximum of 10 days.

Mr. Chairman: Would you be prepared to have a debriefing session within the 10 days?

Mr. Philip: At the end of it, yes.

Mr. Chairman: Okay, that is resolved. We have the estimates of the Office of the Ombudsman. When will we discuss those?

Mr. Philip: I would move that we deal with those whenever the House adjourns. When we dealt with them before when the House was adjourned, the Ombudsman and the concerns of the committee seemed to get--if the House does not adjourn, then we

have another problem. I recognize that.

Mr. Chairman: The clerk just brought it to my attention. If it does not adjourn before March 31, we would have another problem. But we can resolve that as time goes on.

Mr. Philip: Leave it. I have just finished three sets of estimates and I would find it easier to devote some time to thinking and preparing them if we do not have other things to do.

Mr. Chairman: Is it satisfactory to the committee that we will just leave it in abeyance?

Mr. Shymko: We would have to meet before the end of March.

Mr. Chairman: Yes, that is right.

Mr. Philip: We are only talking about three hours.

Mr. Shymko: Is that all it is?

Mr. Philip: It is the wish of the House leaders that the Ombudsman committee usually not meet except when the House is adjourned. We can go to them the last week in March and say, "Look, we are sorry, we tried to do things the normal way."

Mr. Shymko: We are a standing committee. We can meet and do the estimates at any time.

Mr. Philip: Yes. The argument though, by members of the Liberal Party, and it used to be the argument of the Conservative Party, is they have trouble manning too many committees when the House is sitting.

Mr. Shymko: We do not have that problem.

Mr. Philip: You do not have the problem now, but the Liberals have that problem.

Mr. Chairman: You make a good point. The thing to do, if it is satisfactory to the committee, is to bide our time. If we find we are going to be sitting till March 31 then we can fit in the three hours. Is that satisfactory to the committee?

4:10 p.m.

Mr. Shymko: No problem.

Mr. Chairman: What is the committee's 13th report?

Mr. Shymko: That is the one we are working on.

Clerk of the Committee: It is the one John Bell is working on.

Mr. Chairman: As soon as he has it prepared, I can notify the members of the committee, and then we can decide

whether we want to get together and discuss it or discuss it after the House adjourns and before it meets again. That will be up to the committee.

Mr. Shymko: Do I understand that we will be receiving the draft and, as soon as the draft is ready, you will notify us?

Mr. Chairman: That is the proper thing to do.

Mr. Shymko: I would like to meet as soon as the draft is ready.

Mr. Chairman: We should meet as soon as the draft is ready and then decide what we are going to do with it.

Mr. Philip: It would be useful if we could get it debated during this session.

Mr. Shymko: If it is ready for this session.

Mr. Philip: We make some recommendations that people who are in a tight jam are waiting for. If we can get this passed, then there will be a strong onus on the government to settle up some of those matters that are left.

Mr. Chairman: Would it be satisfactory to the committee that as soon as the draft is available, we will arrange for a meeting and discuss it--

Mr. Philip: Go to the House leaders and get permission for another meeting and we will sit.

Mr. Chairman: Okay.

Mr. Shymko: In the light of Mr. Philip's remarks, let us assume that we may be sitting until the middle of March or the end of February. It would be worth while to influence Mr. Bell somehow to speed up the process of preparing the draft so we could debate it in the House before adjournment. Would it be possible, either through the clerk or through you, to indicate that the committee would like to meet?

Mr. Chairman: Todd can get in touch with Mr. Bell immediately to see when it will be available and to try to hasten the availability of the report.

Mr. Shymko: Exactly. Second, I just raised this informally before the meeting of our committee, but concerning the special report that we had discussed earlier in September, the report dealing with international human rights violations and the involvement of the committee in this area, it was the unanimous decision of our past committee and chairman to have it presented. It was tabled in the House, but it was never allowed to be debated.

I would suggest that the special report, or the request for it to be debated, not be part of the 13th report but be a separate inclusion via a letter, so there is no confusion that what we are talking about is a report that was prepared by the previous

parliament but with the consensus of this committee that it be retabled and debated in the House.

Mr. Chairman: That is a point well taken.

Mr. Newman: I do not see why we would want to do what Mr. Shymko recommends. Why?

Mr. Shymko: If I may just tell you the story of what happened, normally reports of the Ombudsman committee are always tabled in the House, and when they are tabled, they are debated. Last year Tom Wells decided not to allow the debate of that report, which had been tabled. It was a very unusual situation for an Ombudsman's report tabled in the House not to be allowed to be debated.

Mr. Philip: That was the report on human rights.

Mr. Shymko: Exactly. Because of the very unusual circumstances of this, Mr. Newman, I feel that the present government and all three House leaders may want to review the situation and allow that report to be debated.

Mr. Newman: Was it debated in the previous parliament?

Mr. Shymko: It was not.

Mr. Newman: Where were you then?

Mr. Shymko: I was there.

Mr. Newman: Why did you not ask for it?

Mr. Shymko: We all raised it.

Mr. Newman: But you got nowhere.

Mr. Philip: Wait a minute. In fairness to Mr. Shymko, he did his best with his caucus and with this House leader. We do not always get our way in caucus; you know that. The fact is that your people did not do very much.

Quite frankly, it was your people who were going along with Tom Wells in what he wanted to do. Mr. Shymko was trying to fight in his own caucus and we were fighting, unfortunately, on our own, but Mr. Shymko was trying to do things that I thought were pretty reasonable. You cannot blame Mr. Shymko. He did his best on that.

Initially, there was a consensus report. It is an important issue. Lives are at stake. I literally mean that. We had evidence about having some vehicle so that when somebody was arrested, there would be a forum, and you and I could bring a case such as that to the Ombudsman's committee or to any other committee that would have the power even to cast light on it.

I had reports from Scarborough foreign missionaries who said, "If you could only do that, there is a psychiatrist at Queen Street Mental Health Centre whose brother was arrested in Chile."

She said that kind of thing really has an impact on saving people's lives. We should get that put before the Legislature. It is important to get that passed.

Mr. McLean: It is not passed now; it is just sitting there.

Mr. Philip: It is sitting there.

Mr. Shymko: It was unanimous by all three parties on the committee, including the chairman. There even were interviews in the Globe and Mail and articles--

Mr. Bossy: What was that report known as?

Mr. Shymko: It is a special report.

Mr. Philip: It was originally a motion by Jim Renwick, who said, "There should be a way in which members of the Legislature can deal with some of the atrocities to civil liberties in countries that are less democratic than one would want them to be."

He was concerned about fascism of both the left and right. He moved the motion and it was debated in the committee. After studying various jurisdictional rights and everything, the committee felt we should have the right to examine those kinds of abuses of civil liberties, particularly offshore kinds of things.

For many of us, it affected relatives of our constituents or maybe even our own relatives in some cases. Unfortunately, for whatever reason, the government House leader, under whose influence we do not know, decided it would not be debated. Unless they call it, we cannot debate something.

Mr. Shymko: I do not know the views of our present government House leader. I do not know whether he feels this is an area of federal jurisdiction and that, as a province, we should not get involved. This is a view that prevails in all three caucuses. There are members who feel that international violations of human rights and so on is under federal jurisdiction, so why the hell should we get involved in it?

On the other hand, as Mr. Philip pointed out, a parliamentary body or institution with prestige can comment, as we sometimes comment through a private member's resolution or through some of the special debates we have had in the Legislature. They really dealt with international affairs. We can point to many examples such as the South Africa situation.

Mr. Philip: Poland.

Mr. Shymko: There have been many. We have precedents. Sometimes we do stand up and make statements of concern. The Secretary of State for External Affairs at the time, Mark MacGuigan, had written to the chairman of this committee stating there was no conflict if the provincial jurisdiction looked into this.

Once a year this committee would allow public delegations to come to it, to talk about tragic cases of violations of civil and human rights and torture, and to ask us to table a special report in the House, which would be passed unanimously by the parliamentarians of the provincial jurisdiction. It could save innumerable lives. It could have an impact on saving people.

4:20 p.m.

There was a consensus that if we as elected politicians, as members of freely elected parliaments could help, we would help. There are no reservations on the humane aspect. There was a consensus, but there are split views and maybe the present House leaders will see it as a jurisdictional problem and not get involved, but we should not give up on this.

Mr. Chairman: Is there any further discussion? Mr. Sheppard, you had a point?

Mr. Sheppard: Yes. Some time ago our clerk sent around a form. I questioned an item, put a note on it and sent it back to him. Mr. Bell wanted a minimum of 10 hours a day at \$85 an hour. I do not know whether any of the other committee members sent anything back or whether they want to say anything at this time.

I felt 10 hours were too many hours. I do not question the \$85.

Mr. Chairman: I think those were the instructions we got from the Board of Internal Economy. They are quite prepared to pay Mr. Bell \$85 an hour, but he had to restrict it to 10 hours per day.

Mr. Philip: This would be in cases where we travel.

Mr. Sheppard: Even when we are travelling? We travel up there, one day going up--

Mr. Chairman: If he travelled with us, he would only get paid for the 10 hours a day. Those were the instructions we got.

Mr. Sheppard: I disagree with you. Maybe I misunderstood. I thought he was paid for 10 hours a day when we are sitting in committee, but when we went on a trip--

Mr. Philip: No.

Mr. Chairman: Not really.

Mr. Sheppard: --I could not see why we should pay him for 10 hours a day when we are travelling. It would probably take eight hours by the time we leave here and by the time we get settled, and we would not do any business. He gets paid two day's travelling. He gets 10 hours a day at \$85 an hour?

Mr. Chairman: No. As I understand it, that is not the way it really works out. I could be wrong and I could be

corrected, but when we appeared before the Board of Internal Economy our instructions were that they were quite prepared to pay Mr. Bell or other solicitors \$85 an hour, but there had to be a ceiling of 10 hours a day. But on travelling, etc., they would not expect--

Mr. Philip: They would negotiate.

Mr. Shymko: They would negotiate something.

Mr. Chairman: That is right.

Clerk of the Committee: Perhaps I can help out. The Manual of Administration limits to 10 hours the number of hours per day that either a consultant or a counsel can charge a committee. For the trip, I had budgeted 10 hours a day for the number of days that we were going to be away for budgetary purposes only. The letter of retainer that Mr. Bell signed with the chairman of the committee stipulates that a negotiation will take place in advance of any trip regarding the exact amount he will bill, up to the limit of 10 hours.

It did not necessarily mean that he would bill the full amount or that he would require the full amount he was allowed for the trip, but it was in there for budgetary purposes.

Mr. Sheppard: This is why I raised the question. You explained it to me. I could not have supported that if it was otherwise.

Mr. Philip: I only wish my lawyer worked for \$85 an hour.

Mr. Sheppard: I had no question about the \$85. That is cheap.

Mr. Philip: Office expenses and everything else.

Mr. Shymko: I agree that we should negotiate his fee for a trip, as is provided for, but I will also say that his participation on the trip was invaluable to all of us. I can tell you that sincerely. I am sure we will negotiate a reasonable cost, but his insight, his assistance and questioning were important to us, just as important as his presence during the deliberations of our committee while dealing with the recommendation-denied cases.

I would challenge any comments that would even contemplate eliminating his participation. It is important that he be present if we can negotiate something reasonable.

I am sure Mr. Sheppard does not mean he would object to the presence of our counsel on these trips. He is only concerned about reasonable financial arrangements. Do I understand your comments correctly?

Mr. Sheppard: That is right. When our clerk says it is negotiable, that is satisfactory to me. Mr. Bell said 10 days would be \$8,500. I am satisfied as long as we can question him.

Mr. Chairman: Discuss it, yes.

Mr. Bossy: He gets travelling expenses.

Mr. Philip: Are we in business?

Mr. Chairman: Does that conclude our business?

Clerk of the Committee: Could I clarify one matter on the special report on human rights? Is it the wish of the committee that the chairman request the House leader to bring it forward as a sessional paper and put it back in Orders and Notices for future debate?

Mr. Philip: I think we stand a better chance of getting it through if we incorporate it in our report.

Clerk of the Committee: That was the instruction to Mr. Bell during the hearings in September. My understanding is that he will include it in the draft he is working on.

Mr. Philip: That is an interesting point. Do we bring it forward as a sessional paper and see if we can get it through in advance of our final report?

Mr. Shymko: I am sorry, I missed the conversation.

Mr. Philip: We can either include the report on human rights in our regular report--and that was what we were planning on doing--or bring it forward immediately as a special report.

Mr. Shymko: I would suggest the second option, that we do not make it a part of the 13th report but make it a sessional report, a matter of tabling it for debate. Retabling it, in fact, is the correct terminology.

Clerk of the Committee: The committee could readopt the report and table it again. It is questionable whether that would fall within the terms of reference of the committee, but it could probably be gotten away with.

The other option is to request the House leader to bring it forward as a sessional paper from a previous parliament and put it back in Orders and Notices for future consideration.

Mr. Shymko: I am not too clear on parliamentary procedure. Are there precedents for taking a report from a previous parliament and retabling it?

Mr. Philip: I think there are psychological problems with that.

Mr. Shymko: Can we not take recommendation-denied cases and other things from Ombudsman's reports from previous parliaments and rehash them?

Mr. Philip: Yes, saying this was not dealt with.

Mr. Shymko: Sure, we have been doing it as part of our committee reports.

Mr. Philip: I think if it is reintroduced with a comment to the House leaders that it had not been dealt with last time and that is why it is important we reintroduce it, it would have a bigger bang.

It also seems less of a kick at the previous House leaders. If we say, we did not deal with it and want to deal with it now, that is a little harsher than saying, here is a new report, we still feel strongly about this issue and these are our recommendations. That has a stronger impact and is less punishing.

Mr. Chairman: We could incorporate that in our 13th report.

Mr. Shymko: No, reintroduce it separately.

Mr. Philip: All we say is that I move, seconded by Mr. Shymko, that the special report of the committee on human rights be reintroduced to the Legislature at the earliest possible opportunity and be reprinted. The wording could be revised.

Mr. Shymko: First, the committee would have to vote on accepting that report.

Mr. Philip: That is what I was doing here.

Mr. Shymko: Secondly, after we accept it, a second motion that we table it in the House must be made.

Clerk of the Committee: The committee had readopted the report in September when it gave Mr. Bell instructions to include it in the 13th report.

Mr. Shymko: So it has been accepted by the committee already.

Clerk of the Committee: It was adopted at that time.

Mr. Shymko: Then your motion is right, but it would have to be worded that it be reintroduced separately from the 13th report.

Mr. Philip: That gives us another shot at the can. If, by any chance because of House business, they do not deal with it, we can still have it as part of our next report.

Mr. Shymko: If it is denied this way.

Mr. Philip: You and I may have our pensions, but we will eventually get it through.

Mr. Chairman: Is the committee in favour of that?

Mr. Shymko: Is there a formal motion?

Mr. Chairman: There has been a suggestion.

Motion agreed to.

Mr. Philip: Can it be recorded it was carried
unanimously?

Mr. Chairman: We will have that in the minutes.

The committee adjourned at 4:30 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

HUMAN RIGHTS
THIRTEENTH REPORT
ORGANIZATION

MONDAY, JANUARY 27, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)
VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)
Baetz, R. C. (Ottawa West PC)
Bossy, M. L. (Chatham-Kent L)
Hayes, P. (Essex North NDP)
Henderson, D. J. (Humber L)
Morin, G. E., (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Philip, E. T. (Etobicoke NDP)
Pierce, F. J. (Rainy River PC)
Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Polsinelli, C. (Yorkview L) for Mr. Henderson

Also taking part:

McLean, A. K. (Simcoe East PC)

Clerk: Decker, T.

Staff:

Bell, J., Counsel

Kaye, P., Research Officer, Legislative Research Service

From the Office of the Ombudsman:

Meslin, E., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, January 27, 1985

The committee met at 3:41 p.m., in room 151.

HUMAN RIGHTS

Mr. Chairman: I see a quorum.

Mr. Bell: Mr. Chairman, if I might assist.

Members, I believe, all have a copy of the material headed with the confidential page. That was prepared pursuant to your directions at your last meeting, specifically to separate the former select committee's special report on human rights from your next usual report, and to report separately with appropriate recommendations to the House.

The background for that is that in 1983 your predecessors tabled this special report in the Legislature; it was placed on the order paper but never debated and obviously never adopted. You all probably know better than I the reasons that was not done. For whatever reason, it was a decision of the previous government not to debate and consider for adoption the report with the recommendation you see in the third page of the material, the recommendation that there be a term of reference created for a committee, specifically this committee, to permit it to deal in ways to assist the Legislature in, "making its voice be heard," as to matters of human rights.

When we deliberated on your report last September it as agreed by all then in attendance to include the special report as part of your report, with a recommendation that it be debated and that a term of reference be applied to this standing committee. That is why the material is before you, to consider whether the recommendation as set forth there, and in the language of the text, the page and a half, should be part of your report right now.

I do not know whether members would like any additional briefing from me as to the background. In May 1980 Jim Renwick moved this resolution. It was debated by all members of the House, with some of the most emotional and eloquent comments I have heard in my young and brief history with the Legislature, going back some 10 or 13 years, and subsequently unanimously adopted and referred to this committee.

The committee heard from numerous representatives of governmental and nongovernmental organizations--I believe they are listed somewhere--including Ian Scott, the current Attorney General, who appeared in his then capacity as representative of the International Commission of Jurists. He attended with another lawyer, Harvey Bliss.

The transcript will bear out that Mr. Scott and Mr. Bliss both supported the spirit of the resolution and the desirability of this Legislature becoming involved in some way; that there be a vehicle working on behalf of and to assist the Legislature, i.e. a committee, to perform and carry out certain duties and functions as may be necessary in the circumstances.

I will not go further and say that Mr. Scott and Mr. Bliss saw this committee as the most suitable. I do not think the transcript reveals that, but common sense would tell us that if there is to be a committee created we should not be reinventing the wheel when we already have one in place that performs parallel or comparable functions in other contexts.

Maybe the best thing, if it is your wish, Mr. Chairman, would be to have me go through the various parts of the recommendation for discussion.

Mr. Chairman: Is that satisfactory to the committee?

Mr. Bell: The text I will leave to your reading. There is no pride in authorship and my grammar has been corrected before, but rather than concern ourselves with that can we just go to the first page which you see set forth in bold type the desire of the previous select committee. What it asked the House to do was expand its term of reference as follows:

"That when it, i.e., the committee, considers it"--I am at the third page, which has the recommendation in bold type.

Mr. Newman: That is the confidential report?

Mr. Bell: That is it, sir, yes.

The substance of the recommendation is that the committee, when it considers it necessary, will consider, review, report and recommend to the Legislature. So there is a discretion as to this committee performing a so-called monitoring function or a watchdog function; and it will do any one or combination of four things resulting in a report to the Legislature on ways--these are the operative phrases--"on ways in which the assembly can act to oppose and condemn acts of political killings, imprisonment, terror and torture, and any other acts which may be included in any covenant or document to which Canada is or may become signatory."

If you trace those words you find, with the exception of the last phrase dealing with the covenant, that they are taken exactly out of the resolution that the House passed. The reason for this, of course, is that this committee, the select committee, believed it was necessary to have some vehicle to assist it in determining ways in which it can act.

The recommendation goes on: "And in particular, the committee shall have the power to consult with, and if deemed appropriate, establish formal relationships with and provide actual support to, government and nongovernmental organizations whose aims and objectives are dedicated to the elimination of the kinds of acts mentioned above."

That was worded in the way it was to give the committee the ability, with maximum flexibility, to establish working relationships, information relationships, support relationships, within and without Canada.

On the governmental side it would be possible under that term of reference for the committee to provide actual support, either in kind or in person power, man or woman power, or in money, to some committee or agency of the United Nations, for example, or to some committee operating out of External Affairs that might be assisting some countries or some effort towards the remedy of human rights atrocities.

As to nongovernmental activities, all of the nongovernmental agencies that you know that are associated with human rights matters: Amnesty International, the International Commission of Jurists, the international parliament--I am not sure of the title but there is a worldwide association whose members consist of colleagues of yours in many countries, western developed countries, the Third World, and I guess in some oppressed countries, whose purpose is to put a spotlight on atrocities committed against politicians.

Mr. Polsinelli: May I raise a point of order? I notice this report is marked confidential. Is this discussion in camera or is it on the record?

Mr. Chairman: This report has been before the Legislature.

3:50 p.m.

Mr. Bell: I raised that when we started and I am told a decision was already made by this committee to consider the adoption of the report publicly and that it is not necessary to have this deliberation in camera, certainly not my explanation of the previous committee's aims and objectives. That decision is open to members, though, if they want to deliberate or make their own comments.

Mr. Polsinelli: This report is not confidential?

Mr. Bell: No, this report has been tabled in the Legislature. What is confidential, what has not been disclosed publicly before, nor does it have to be even in a public debate, is the material on pages 1 and 2.

Mr. Polsinelli: Which we are presently discussing.

Mr. Newman: It has already been tabled in the Legislature.

Mr. Bell: Not that part.

Mr. Newman: Pages 1 and 2 are confidential?

Mr. Bell: Pages 1 and 2 have not been made public. That is what you are considering. It has already been a matter of public discussion whether this committee shall adopt the term of reference as its own. As I say, members may wish to make their comments in camera as opposed to publicly, that wish should be considered.

Mr. Polsinelli: I merely raised it for your consideration, Mr. Chairman. I just noticed there was a bit of a discrepancy between the way the report was marked and the way these deliberations were proceeding. Frankly, it matters not to me whether we are in camera or whether we are on the record.

Mr. Bell: I do not think there is anything you need to be concerned with in the deliberation on whether to make this report your format. Unless you tell me otherwise, I cannot think of anything that could not be said in public.

You have a second document that is going to be placed before you in some detail today; that is the second report, that is what is left. That, as a matter of procedure, historical and otherwise, should be considered in camera because it contains things that go to your proceedings last September.

Mr. Chairman: Shall we proceed?

Mr. Bell: That is the background of the operative phrase, "establish formal relationships with and provide actual support to."

The second paragraph deals with some specifics of the committee's authority, "power to receive, consider and review specific examples of the kinds of actions herein mentioned and, if deemed advisable, to report thereon to the Legislature with any recommendations for actions which the Legislature might take;

"And pursuant to the above, the committee shall have the power to sit concurrently with the House such times as it considers necessary and appropriate."

The committee recessed at 3:54 p.m.

4:03 p.m.

Mr. Chairman: We will now resume.

Mr. Bell: Before the quorum bell rang I was taking you through the second paragraph of the select committee's recommendation. The intent here is to flush out in a practical sense what things the committee might do pursuant to its terms of reference. Specifically, it would have "the power to receive, consider and review specific examples of the kinds of actions."

It is restricted to actions in other countries, at least that was the background of intent. There was no consideration given to this committee becoming involved in matters of human rights in this country or this province, because there are a number of other vehicles, statutory and otherwise, available both to this Legislature and to members of the public.

The purpose is to continue to shine the light on the circumstances of international atrocities as defined in the recommendation, and to assist the House with recommendations as to what the House might or might not do.

The text of your report adopting--let me read the last paragraph on this first page where you say that you are, "committed to the implementation of the substance of the recommendation contained in the report." The reference is to the report of the select committee. The need to assist the Legislature in making its voice heard on the matter of international human rights is greater today than when the report was tabled.

"Accordingly, the committee adopts as its own report the select committee's report; and for the assistance of members of the House the report is annexed hereto as schedule A."

On the second page, merely to accommodate this committee's different status relative to the select committee, you repeat the recommendations with appropriate amendments. The recommendation as set forth on page 2 is identical in substance. It just refers now to standing committee as opposed to the previous select committee.

The last statement you make is in the form of a recommendation that the report be placed on Orders and Notices for early debate.

I toyed with the idea of giving it a specific date, but I relied on better advice, that is the clerk's, and chose not to do it. "Early date" is full of all sorts of connotations; the risk being, of course, if we set a specific date and the date comes and goes people might think they are relieved of an obligation to act.

That is where it is. Quite simply put, the question is do you agree with--I am sorry, even that is not in question. You decided in September you did want to adopt this as your own and so recommend to the House. This is really an excerpt from the large report prepared for you.

I do not think I can usefully add anything, although the point was raised whether there was some risk that if you table this report separately and then come in with the next report dealing with the nuts and bolts of your hearings, you might have this one debated and the second one, which is arguably just as important, and in one sense perhaps more important, not debated.

I cannot answer that. It is incumbent on all members, though, to speak to their respective House leaders, or however you choose to do it, to have it all debated at one time.

Mr. Bossy: What if the House should prorogue? What happens? Just for clarification.

Mr. Philip: What we are trying to do is debate it, if possible, before the House prorogues.

Mr. Bossy: Does it become dormant again, as this did?

Mr. Philip: It then has to be dealt with when the House reconvenes; it does not disappear.

Mr. Bell: As long as it is the first session of the Parliament, as long as we are in the same session. You have to resubmit these matters session to session, or by agreement.

Clerk of the Committee: Once it is tabled it becomes a sessional paper and it can be brought forward and put on the order paper at that point, as long as that is done each time there is a new session.

Mr. Bell: Another problem is that the select committee's last, that is its 12th report, has not been debated; which again raises a technical thing. Technically, that report would have to be resubmitted; although, without breaching any confidences, when you look at the text of the larger report you will see that I addressed that in the form of a recommendation. Perhaps that should be altered in some way, even though it may be that in practical terms it does not make any difference any more.

Mrs. Meslin, is there anything about the select committee's 12th report on which your office requires the support of the Legislature? I cannot think of any recommendation wherein anybody is challenging the obligation to do so because of a technicality. The problem is, however, it is a break from precedent, and in the early days of the select committee some governmental organizations relied upon the failure of the House to debate and adopt a report as justification for their decision not to do anything. We had some interesting discussions with the Attorney General of the day and with others as to what was the obligation created by a House adopting your report and recommendations. I do not think in practical terms there is a difficulty.

Mr. McLean: Did we not indicate we wanted this report to go ahead, not with the other full report but as a partial report and have it dealt with? Are you telling us that it should not go until the next session?

Mr. Bell: No, I think it should go immediately.

Mr. McLean: Okay.

Mr. Chairman: Then it is up to the House leaders to decide whether or not to debate it.

4:10 p.m.

Mr. McLean: That is what I wanted to find out.

Mr. Bell: I also think that when the other report you have before you is finalized by you that should be tabled immediately thereafter. Everybody can then do what they can to have it debated. Ideally, there could be a debate of both reports at one time.

Mr. McLean: But we cannot do that until the House is not sitting. We have to do that in between the sittings. Is that right, to deal with the total report?

Mr. Philip: No, it could be debated next week if the House leaders give us permission after we have approved it.

Mr. McLean: That is the single report?

Mr. Philip: Yes.

Mr. McLean: But what about the other report.

Mr. Philip: The other report, once it is finalized and tabled, can be debated at any time.

Mr. Bossy: But the 12th report has not been debated.

Mr. Philip: It does not matter. They can call any report. They could call 13th before 12th.

Mr. Bell: In practical terms you would want the 13th report called before 12th, because 12th has practically looked after itself.

Mr. Chairman: Is there any further discussion with respect to this report? Are members in favour of tabling the report as presented in the Legislature?

Mr. Bell: Mr. Chairman, you should probably take a motion to that effect. I think the clerk would require a motion for his records.

The only difference is that you now have the language of the report before you, so there could be a motion adopting this special report in the language as set forth in the document attached.

Mr. Hayes: I will so move.

Mr. Chairman: It has been moved. Do we have to have a seconder?

Mr. Bell: I think we do.

Mr. Chairman: Do we have a seconder?

Mr. Morin: I have not had a chance to really study this thoroughly. Is there any possibility that we could pass the motion the next time we meet, so that we can--

Mr. Philip: With respect, we have studied it thoroughly. It has been studied for three years. You may not have been on the committee.

Mr. Bossy: We are new members on this committee. This is the first time we have seen this.

Mr. Bell: The clerk advises that there is a motion on the record that the committee already adopted the report in September. What is new are the two pages attached to the report of the select committee.

Mr. Chairman: We have a motion, if we can have a seconder.

Mr. McLean: I cannot second it. I have not had a chance to read this and I am new on the committee. I think somebody who has some knowledge of it should be dealing with it.

Mr. Chairman: I am informed by the clerk that we do not need a seconder.

Mr. Philip: If I may speak to your concerns: the members of the committee were very concerned that this was not debated in the House earlier. The member for High Park-Swansea (Mr. Shynko) in particular was one of your members who was very concerned.

It has been studied extensively and I can give you the assurance that there is nothing in this that you would, in my opinion, object to. First, the original motion by Mr. Kenwick did not have one dissenting voice in the House; and second, it was a unanimous report by the committee. So there was no dissenting voice from any of the parties on the committee.

I would stress to you that it is very difficult to get the House leaders to agree to have the Ombudsman's committee sit when the House is sitting because there are so many other committees. If you delay this it will probably mean we will not get to debate this report in the House, which in turn logjams our next report.

One of the things that is vital in this issue is that often, what you are talking about is literally saving people's lives. In bringing an issue forward as far as some of these governments are concerned, particularly if you bring it forward with names of people who have been arrested, a matter of weeks can have an effect on whether they disappear forever or end up with some lesser fate, such as five years in jail or something like that.

So if you have some anxieties, adjourn and talk to some of your colleagues who were on the committee, but please do not delay this any further. You can debate it in the House if you want any changes. You could always, for that matter, bring your concerns out in the House and they could be dealt with in committee later, but do not delay this report.

Mr. Bossy: I am trying to get some of these things clear in my mind. There have been two pages added, which would really be amending the original somewhat. Given the original motion to adopt it back in September, there should first be a motion to amend the report, and then to readopt it. I am just wondering if that would not be the proper procedure, because it is really amended from what was adopted back in September?

I just wanted to ask a question on the wording. Not having had a chance to study the material thoroughly but just glancing over it, could someone who was involved in preparing this report clarify if we are saying that the Legislature of Ontario could raise a strong voice in external affairs, bypassing the government of Canada?

Mr. Philip: No, it does not do that at all.

Mr. Bossy: It does not do that?

Mr. Philip: No, as a matter of fact, if you turn--

Mr. Bossy: What benefit do we derive from having the province speaking out?

Mr. Philip: If an issue becomes apparent at any stage, just the fact that we can act as a political forum focuses public attention, at least in the western world or at least in Canada, depending on how wide our coverage becomes, on that particular issue. It is one extra forum in which to deal with concerns.

If this report had been in place and you had a constituent whose relatives disappeared, as was often the case in Argentina until recently, we could have dealt with it and perhaps saved somebody's life. In the case of the South African issue in recent days, we could have dealt with some of that.

Mr. Bossy: That is provincially. Where does the government of Canada come in. It is still the international voice.

Mr. Philip: We are not making specific, direct representations to governments, except through external--

Mr. Bell: Mr. Bossy, the thing that we cannot lose sight of is that it is only a recommendation to expand the terms of reference of a standing committee of the House, and as such the only authority of the committee, after it learns about, talks about, considers and reports on things, is to recommend to the House what could or should be done.

In the ultimate, of course, it is the House that decides what action it will take, if any; and of course translated that means the government of the day will take. So this recommendation is not a recommendation that permits this committee to do things in an extraordinary way.

As for its reporting relationship to the House, a hindsight example is that if this committee had such a term of reference, presumably it could have recommended to the Legislature on the subject of South Africa that we not hereafter sell its liquor in liquor stores; that is in fact the policy the government has adopted. That is a good example, I think.

4:20 p.m.

I do not want to get into any other examples, because frankly I am not current on a lot of the concerns today; however, that is the type of thing.

It is to keep the Legislature current on human rights matters that have bearing on the province's ability to act. Nobody had ever perceived or contemplated that they would be doing end runs around any other government or encroaching on any areas of protocol as per our nation's external affairs or the United Nations or the like.

Just one last point. In technical terms, because you adopted this report in September and two weeks ago decided to table it as a separate report, the motion is really a motion as to whether or not you approve the language that we have drafted for you in those two pages; the substantive issues having already been decided.

I would remind members that the special report was part of the brief of materials you had in September. We did not spend a lot of time reviewing it; it was left to members to study on their own. We did discuss back then; you might recall the substance of the recommendation in the context of your decision to adopt it.

I do not know if I can add anything or be of more assistance to you in putting or not putting any motion.

Mr. McLean: I will second the motion.

Mr. Morin: Can I make the amendment a little stronger?

Mr. Chairman: Just a minute. This gentleman and then Mr. Hayes; and then I will get your comments.

Mr. Polsinelli: I will be very brief in my remarks. Because I am a substitute member on this committee I do not know the body of the report, other than the brief opportunity I had to peruse it prior to this meeting.

I have no problem with the recommendation. I am prepared to vote on it today. We should send it to our House leaders and have it debated in the House.

The only concern I have is with respect to the language, particularly page 1 of the two pages we are dealing with. In the fourth line from the bottom where it indicates, "... the need today to assist the Legislature in making its voice heard on the matter of international human rights is greater than the need which existed when the report was tabled." Except for that particular line--

Mr. Philip: Can you speak a little bit louder. I am having trouble hearing you.

Mr. Polsinelli: I am sorry. I basically have no problem with voting on this report today and presenting it to our House leaders and recommending that it be debated in the Legislature. The only concern that I have is the editorial comment about international human rights, which indicates the need is greater today than the need which existed when the first report was tabled.

That is basically an editorial comment. As a member of this committee, I have nothing to substantiate that, other than my own reading of the newspapers. If we could remove that particular aspect of it I would have absolutely no problem with this report.

Mr. Bell: I thought it was a comment of substance. I took some licence. With the exception of Mr. Shynko--I do not believe that Mr. Philip was a member of the committee when it was considered and prepared--I am the only survivor, so I just tried to give a little sense.

If it is felt to be an editorial comment, then by all means take it out.

Mr. Polsinelli: I am not indicating, by any means, that it is not the fact, it may very well be the fact; but given that the majority of the members of this committee are new members and were not privy to signing the original report, it may not be appropriate to indicate it.

Mr. Philip: May I make a suggestion of wording which may be acceptable to you? Instead of taking out "is greater," why not put "is as great, if not greater." That leaves it vague enough that it opens up the possibility. That should satisfy your need.

Mr. Bell: Can I make another suggestion? "The need today to assist the Legislature in making its voice be heard on the matter of international human rights still exists."

Mr. Polsinelli: Yes.

Mr. Bell: Okay. That leaves it open to anybody to draw their own conclusion.

Mr. Hayes: I just wanted to make a brief comment. Mr. Bossy was concerned we were going to bypass the Department of External Affairs. If you went to the second page in the report, the chairman was directed by the committee to write a letter to the Secretary of State for External Affairs seeking his guidance and support; and the bottom paragraph indicates the minister actually sent a senior diplomat to discuss it. Our federal counterparts encouraged the committee, confirming that its work was not only entirely proper but extremely important and beneficial within the overall context of Canadian federalism. That work has already been done. The intention here is not to bypass the federal government. It is something they have actually encouraged this committee to do.

Mr. Morin: Perhaps a letter to the leaders, signed by you Mr. Chairman, should be sent along with the report, indicating the importance of having this matter debated as soon as possible. This would add more emphasis to what Mr. Philip has mentioned.

Mr. Chairman: Yes, okay; that is no problem. Mr. McLean has indicated he would be pleased to second the resolution.

Mr. Polsinelli: Do we need a vote?

Mr. Chairman: Will the resolution, as amended, be adopted?

Resolution concurred in.

Mr. Chairman: All agreed but Mr. Newman.

Mr. Philip: It was not a recorded vote.

Mr. Chairman: Do you wish it to be recorded?

Mr. Newman: I am not familiar with the material so I do not want to come along and say I agree with it when I do not know enough about it.

Mr. Polsinelli: All it is really saying is that--

Mr. Newman: It is all right for you to interpret it that way. It is not necessarily the way I am interpreting it.

Mr. Chairman: Maybe we could move on to our next business.

THIRTEENTH REPORT

Mr. Bell: I must apologize. As I indicated to you earlier, I have to give a lecture at York University at 5:30 and I do not think I am going to make it even if I leave now, although I do not think members were intending this meeting to be terribly long.

Mr. Morin: You have a captive audience here.

Mr. Bell: I have a captive audience here; I certainly do.

We have placed before you the draft of, I call it the second report of the standing committee. The clerk tells me that for continuity we should keep the numbering system that started with the select committee, so this would be the 13th report of the standing committee.

I do not know what your times--

Mr. Chairman: In view of the time limit possibly we could meet at a later date to discuss this.

Mr. Bell: I was not sure whether you intended to go through this clause by clause today or whether you wanted to receive it finally and review it. In view of the comments that some of you have made respecting the previous report, some might wish to refresh themselves as to what went on in September, and others might want to get up to speed on various issues.

4:30 p.m.

Ms. Madisso assisted with some of this. We were assiduous in recording the essence of your deliberations. As for the matters that are set out herein, the index, being pages 4 and 5 of the material, gives you the subject matter.

To be realistic, in terms of time taken and consequences, the important issues are to make sure your previous report, i.e., the select committee's 12th report, is properly addressed; and next, to ensure that the so-called recommendation-denied cases the Ombudsman reported in his previous report, which are set forth in part 4 of this report, are appropriately addressed in the form of recommendations to the House.

In terms of what you need to zero in on, I would say Part II(a), where I set forth a recommendation as to the treatment of the previous report; part III(c) and (d), amendments to the Ombudsman Act, for obvious reasons. You will recall there was discussion indicating this was promised some two years ago and there is still not a bill tabled in the House. I expect you are anxious, as is the Ombudsman, to receive it so it can be given appropriate treatment clause by clause, etc.

You will recall that in September Dr. Hill raised for discussion the issue of expansion of the Ombudsman's jurisdiction. There was discussion as to how that issue should be addressed, if at all; and in part Part III(d) there is comment by the committee, with a recommendation.

I have already mentioned Part IV. You can further distil your review. Part IV (i) and (ii) require more attention than (iii), which deals with the Workers' Compensation Board. It merely says that you supported the Ombudsman's recommendation and so announced during your hearings in September, and for purposes of formality and technicality have repeated the recommendations supporting that.

Mr. Philip: Can I ask a question on that? Just to give some idea of the urgency of this. We are having trouble getting these committee meetings schedule with all the other things that are going on. Eleanor, can you tell us if, among the recommendations denied on which we supported the Ombudsman in this report, there are any still outstanding that have not been resolved? Are there still some that any of the ministries have refused?

Mrs. Meslin: I do not know if you supported them all. There was one outstanding that we were not--

Mr. Bell: That is the problem. We announced our position on all but one. In so far as the ones we have announced we supported, are all or any still to be implemented?

Mrs. Meslin: I think one WCB matter is still to be implemented.

Mr. Bell: So there is one out of those two, and the other one that was announced involved the Ministry of Health?

Interjections.

Mr. Bell: Not Health, it was the Liquor Control Board of Ontario.

Mrs. Meslin: That is the one I do not know about.

Mr. Newman: I do not know what page you are on. Tell me a page while you are flipping the pages.

Mr. Bell: I am still on the index, sir.

Mr. Newman: All right, what page is that on?

Mr. Bell: Page 2 of the index, dealing with Part IV.

Mr. Philip: My position is this: it seems to me that if there is even one case where somebody is denied some kind of justice and we have found in favour of the Ombudsman rather than the ministry, then it is pressing on us to get the report through. If on the other hand, as so often happens once the Ombudsman's committee finds in favour of the Ombudsman, the ministry backs off and says all right, then there is less urgency for this report to be dealt with. It could be dealt with in the recess on the assumption that it is very unlikely the House leaders are going to allow us to have two reports debated before adjournment.

It seems to me that if we are not going to get two reports debated, then maybe we should deal with this during the adjournment. We will have adequate time to deal with it, and then bring it back and ask that it be dealt with early in April when we reconvene. I suspect we are really getting everything we can if we get the special committee report dealt with.

Mr. Bell: Could I make a suggestion? The recommendations set forth under Part IV are recommendations you have already decided upon in camera in language we discussed. The only thing new is the text I have chosen to accompany that recommendation. I shall need some guidance from the clerk, but you have already adopted a practice of deliberating on recommendation-denied cases and thereafter announcing your decision. I believe that would permit you today, if you chose, to read into the record the recommendations as to those four cases, with the report to follow. I would urge you to consider that, if Mrs. Meslin tells us that would assist her and Dr. Hill in pushing for speedy implementation.

Mrs. Meslin: It certainly would.

Mr. Bell: That would serve your concern, Mr. Philip. Then the pressure is not on members to get this thing read, understood and accepted to your satisfaction.

Mr. Philip: Then we can dot the i's over the recess.

Mr. Bell: You can dot the i's or do whatever you want. I think that is a procedure that should be followed hereafter. In September, when you do deliberate, before the report goes to the draft stage you should announce on the record what you have decided to do with reasons to come, in effect, and give Dr. Hill and his office a chance to take their action at the earliest opportunity.

I do not believe that requires a motion. If members agree to that format, I shall read into the record what we have in Part IV only in so far as it deals with the recommendations. We will not disclose the full text, that can be left. For those who were not present for the September deliberations--and the clerk can confirm this--it was a matter of motions, debate and decisions on all those recommendations.

Mr. McLean: This report was debated in September and a lot of recommendations have been made. To date this report is still sitting. I know there is one recommendation on which the individual involved is sitting waiting for a certain aspect to be dealt with, and it is going on and on. This guy should be getting thousands of dollars and here we are sitting and postponing some of these recommendations.

Mr. Philip: That is the crux of the matter. If we accept what Mr. Bell is suggesting, if we adopt the recommendations, that gives the Ombudsman the ability to go to each of the ministries and say, "The standing committee on the Ombudsman has adopted these recommendations and the report is coming to the House." That will give them the leverage, one hopes, so that in each of the cases the ministry will say: "It is going to be passed by the House anyway. We might as well give in now as two months from now." If we proceed this way I think we have achieved both of our objectives.

That was what I was concerned about. If we dot the i's now we may not get it into the House, but if we at least pass this--

Mr. Bell: We are only talking about two recommendations, because the recommendations on the Workers' Compensation Board cases have already been read into the record and the board knows it is expected to implement them. We are really only talking about, referring to your index, the Ministry of Consumer and Commercial Relations, the recommendation at page 19 of the material. It says Ministry of Health but it is not; it is the Liquor Licence Board of Ontario, the second one. The recommendation of same is found at--your conclusion is found at page 23, there is no recommendation which will tell somebody what we did with that one.

Mr. Philip: Can we consider it as read?

Mr. Bell: No, you cannot; this is not a public document.

Mr. McLean: There is reference to the Ministry of the Environment, on page 4. There is one that has to be dealt with; recommending that an adjudicator be appointed to look into this, and until that adjudicator is appointed there is nothing being done.

4:40 p.m.

Mr. Bell: That is a fair comment. That is another one that should be addressed. I think you are right; there are three. If members will concur, I shall just read the relevant material into the record and then absent myself.

Mr. Chairman: Is that favourable to the members?

Agreed.

Mr. Bell: For the purpose of the record, this is the notice by this committee to all those concerned as to its recommendations in the three matters which the committee considers to require immediate attention. The recommendations are now being read to inform the governmental organizations affected that there is something required of them by this committee and to assist Dr. Hill in pursuing his efforts to have the matters implemented in whichever way he deems appropriate.

Dealing with the first recommendation of the 12th report of the committee as to the Ministry of the Environment, the committee considered last September the response of the ministry and comments made by the Ombudsman and his staff and some members of the committee who had concerns as to the substance of the implementation, and the committee comments as follows:

"The committee agrees that in fairness to both the ministry and the complainant the matter should be assessed by someone other than the ministry. It therefore recommends that an independent adjudicator be appointed to assess this matter of whether or not interest is owed to the complainant."

That is the committee's recommendation in that case.

Dealing with the recommendation-denied cases as reported in the Ombudsman's 12th report, the first recommendation-denied case deals with the Ministry of Consumer and Commercial Relations, which is set out in Detailed Summary 1. If members want to follow with me, it is at page 19 of this draft. This is the Canadian Home Builders' Association case. The issue, you will recall, is whether the then Minister of Consumer and Commercial Relations--

Mr. Newman: Would you mind mentioning the page when you are flipping them over?

Mr. Bell: Page 19, sir.

Mr. Newman: You have not been doing so when you were mentioning some of these things, and I do not know where you are.

Mr. Bell: I am sorry, I thought I did.

Mr. Newman: I did not come down here just to take up space at a desk. I came down here to learn.

Mr. Bell: My apologies; I thought I had mentioned page 19.

If members concur, could I ask the clerk of the committee or the chairman to read these in? There is no magic in my reading them in; and I think that will be the end of your business for the day, if that is acceptable.

ORGANIZATION

Mr. Philip: I have another item I wanted to raise while you are here. Your students can blame me, but I was concerned because it does affect our work, about a reference in the House leaders' reports, a memo that is going to our caucus tomorrow, therefore I assume somebody advised the House leaders. It says, "The Ombudsman's report: the committee is not expected to request authority to sit or to travel."

This is a document talking about potential work loads during the recess, and I think we have to send a memo to the House leaders fairly clearly indicating we do have a certain amount of work and how many weeks we are going to require during the recess. Otherwise they are not going to schedule us at all.

Mr. Bell: If you want my input: bypassing for the moment the trip you had to reschedule again--which by the way I think it is absolutely necessary to reschedule, I do not think there is a debate on that--there are matters in this draft report, particularly the recommendation as to the expansion of the Ombudsman's jurisdiction or the consideration of the same, on which if you accept what I have set forth for you, and if the House accepts and adopts it, of necessity will require more than the usual sitting time, and I would venture to say raise a real probability of a requirement to travel.

If that will assist you in any decision as to whether you wish to qualify the memorandum that has been distributed, that is my view of the situation.

Mr. Philip: We are at least going to have to deal with the Ombudsman's estimates; and we are going to have to deal with cases denied. How many of those are--

Mr. Bell: We cannot say yet because they have not closed off the year, but I had a discussion with Mrs. Meslin before we started and there may be a special report.

Mrs. Meslin: There may be three.

Mr. Bell: Dr. Hill may see the need to table three special reports dealing with three recommendation-denied cases. If that is so that adds to your work load.

Mr. Philip: I am sure there is no way they are going to give us permission to sit for more than three weeks. We can ask for everything we want but it is just not possible in that short a recess. May I suggest that a letter be drafted immediately from the clerk to the House leaders saying we are going to need a minimum of three weeks, four days per week, to deal with the estimates, cases denied, and for the further consideration of matters arising out of the 12th report.

Mr. Bell: As well as any Ombudsman bill which is tabled, and any consideration of the expansion of his jurisdiction.

Mr. Philip: That is almost all in the 12th report.

Mr. Bell: As well as the trip to the north.

Mr. Philip: The trip to the north, though, would have to be dealt with in--we can schedule that for September, can we not?

Mr. Chairman: Is that satisfactory?

Mr. Philip: Is it agreed that that will be done?

Mr. Bell: Just one more thing. There is only one more set of recommendations to read, the matter dealing with the Liquor Licence Board. You decided not to support the recommendation of the Ombudsman on additional compensation. Reasons are set forth for your review to be settled. The committee believed that the person in the circumstances had been adequately compensated already, both in money and in the circumstances of the disposition of his termination of employment. I do not think we need to say anything more about it. It will assist you, knowing you do not need to look to the LCBO for anything further.

Forgive me, I must be on my way.

Mr. Philip: What do we do now?

Mrs. Meslin: I assume you are going to set some dates for estimates.

Mr. Chairman: I think Mrs. Meslin would like to address the committee. As soon as the members of the government return we shall call on Mrs. Meslin.

Mr. Philip: Do you see a quorum?

Mr. Chairman: Yes.

4:50 p.m.

Mrs. Meslin: I wanted to address the committee, to raise a problem and make a request.

I understand that in the adjournment time, when the House is no longer sitting, I hope sometime in March or maybe February, you will be examining our estimates, for which you generally set aside approximately three hours. The Ombudsman has asked me to request that you to extend your sitting time for the rest of that day, and perhaps the next, to consider possibly three special reports. Our reason for making this request is that one in particular has its own deadline attached.

In other words, if, as we believe, the recommendation will be denied, there is a June date which is critical to the complainant. Unless this committee hears it before then it will be useless to bring the matter forward.

There are two other possibilities. One is a Workers' Compensation Board case, which we, on the basis of an agreement with the WCB, did not bring before this committee in September. It appears to us at this time that the WCB is not sticking to that agreement. We feel it is imperative to bring the matter before this committee as soon as possible, because it has now been six years.

That is the type of case which gives us concern. There will probably be three, and we hope the committee will give consideration to hearing and discussing them at during the meetings you are endeavouring to schedule.

Mr. Philip: Is there any particular time during the period of the recess--assuming we are successful in getting out of here on February 15--that the Ombudsman is not available to meet with the committee?

Mrs. Meslin: He is available the last week in February and the first week in March, or March 10 and 11. Any of those dates would be fine.

Mr. Philip: I hope you would not schedule it for the first week in March, since I will be in Venezuela and I am our party's critic on the Ombudsman. I would like to be here for his estimates.

Mrs. Meslin: We have no idea how long the adjournment will be?

Mr. Philip: Rumours can often be wrong, but rumour has it that it will be from February 15 to April 1.

Mrs. Meslin: The Ombudsman will be going on his northern trip during the third week in March. That is why he has suggested the last week in February.

Mr. Philip: Could we have a subcommittee work out an agenda once we have a better idea closer to the date.

Mr. Chairman: That would be in order.

Mrs. Meslin: We are asking if this committee would be willing to tack another day to the end of meetings on the estimates, whenever that is decided.

Mr. Philip: That is reasonable.

Mr. Chairman: That can be arranged.

Mr. McLean: If the subcommittee is going to be looking into arranging days for the committee to sit and the House adjourns on February 15, the two weeks following that should be looked at, because some members of the committee are going to be away the first week of March and the second week of March is school break. We are then only going to have one week at the end of March. We had better do two weeks in February if we can.

Mr. Chairman: If the House adjourns on February 14.

Mr. Philip: I think we have to do it close to February 14. I realize that is more awkward for the Ombudsman.

Mrs. Meslin: You mean closer to the adjournment date?

Mr. Philip: We should decide close to the adjournment date when we are going to handle it.

Mr. Chairman: If the House does adjourn on February 14, would the committee be willing to meet during the next two weeks if we get permission.

Mr. Philip: The only problem that we may have--and the clerk can check this out--is that the standing committee on public accounts, which has an overlap in membership with this committee, may be sitting those first two weeks as well. Maybe you can check that out. Because of the similarity of the two committees, there are members who sit on both of those committees.

Mrs. Meslin: I assume the subcommittee will try to--

Mr. Philip: Will discuss the matter with you.

Mrs. Meslin: With me, yes.

Mr. Philip: Maybe we can just set up a breakfast meeting or something like that. That may be the easiest way at this time. It is sometimes the only way of handling things.

Mr. Hayes: Can I make one suggestion before you go on? You are talking about the subcommittee setting dates and things like that. I hope we can get notification as to when we are meeting and what we are going to meet about a little ahead of time.

It is rough when you are sitting in the Legislature and you get a yellow paper put in front of you saying there is a meeting. It is quite obvious a lot of the members are not really aware what we were brought here to discuss. We should have information which is a bit more specific.

Mr. Chairman: I agree.

Mr. Philip: Fair enough. It is a strange world in which we happen to be living.

Mr. Chairman: That is a point well taken. In particular, keep the chairman notified.

Mr. Philip: Mrs. Meslin, may I assume that as part of the report the Ombudsman will be making to the committee dealing with his estimates, he will be making his progress report on his investigation into the Ontario Housing Corporation.

Mrs. Meslin: I am sure he will do that.

Mr. Philip: So we can have a debate and discussion on that.

Mrs. Meslin: It is on the list. It is not finished but we will get to it.

Mr. Philip: I would like to have that as part of his estimates.

Do we have to move acceptance of the recommendations that have been read into the record? Perhaps the clerk can comment on this. Is that the procedure we now follow.

Clerk of the Committee: Mr. Bell indicated that having them read into the record was enough to give an indication to the interested parties as to what would later be reported formally in the committee's report.

Mr. Chairman: It also gives the Ombudsman some authority to act.

Clerk of the Committee: We have accomplished what we set out to do.

Mr. Philip: Is that sufficient for you? Let us move adjournment.

The committee adjourned at 4:56 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ORGANIZATION
WEDNESDAY, FEBRUARY 19, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Hennessy, M. (Fort William PC) for Mr. Sheppard

Also taking part:

Epp, H. A. (Waterloo North L)

Clerk: Decker, T.

Assistant Clerk: Deller, D.

Staff:

Bell, J., Counsel

Madisso, M., Research Officer, Legislative Research Service

Witness:

From the Office of the Ombudsman:

Meslin, E., Executive Officer

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, February 19, 1986

The committee met at 10:15 a.m. in room 228.

ORGANIZATION

Mr. Chairman: The committee will come to order. We will open by calling on our counsel.

Mr. Bell: Mrs. Meslin is with you today. The purpose of today's meeting is more housekeeping than anything else. It is to review some outstanding matters and do some planning for future committee hearings.

The first order of business should be the revised agenda, which Todd has prepared for you. Mrs. Meslin, do you have a copy of that before you?

Mrs. Meslin: Yes, I do.

Mr. Bell: Is that agenda, particularly next Tuesday's arrangement, convenient for your office?

Mrs. Meslin: Certainly. The only thing I am not clear on is that it says 10 a.m. to-- . Are you expecting to stay all day, a half day or what?

Mr. Bell: That is deliberate. They have left the time open, really. It will be more under your control than anything, although I am sure, as somebody remarked yesterday, that lunch would be appreciated. It was not I, because I will not be there; but as long as that is all right, then it can be finalized.

The next thing I have is the scheduling of future committee dates to receive and consider any special reports that your office intends to table in the House. What do you have for us on that regarding the timing of the tabling and other matters?

Mrs. Meslin: I had discussed it earlier with Todd and, understandably, there are tremendous number of conflicts because of the number of committee meetings.

I am wondering about something that I think I will have to check with the office. It appears to me that the only dates we can settle on when committee members are going to be available and Dr. Hill will be available are March 6 and the morning of March 7, which is a Friday. I know the committee does not like to meet all day Friday. I thought we might be able to complete the business in the morning so it would be finished by noon. We would have a day and a half to give you two cases, I hope.

Mr. Philip: That is not helpful to us, because on March 6 I am in Venezuela, and right after that we have our caucus retreat.

Mr. Shymko: Which committee is that that goes to Venezuela?

Mrs. Meslin: Can we go to Venezuela?

Mr. Philip: It is my personal committee. I am taking all my staff as a bonus for their hard work during the year.

Mr. Shymko: Do we need our counsel for these two cases?

Mr. Bell: I like to think you need your counsel for these.

Mr. Shymko: Will counsel be back from the islands?

Mr. Bell: Oh, yes. Counsel will be back next Friday.

Mr. Morin: We will be on the standing committee on procedural affairs and agencies, boards and commissions on March 6 and 7. We have a shortage of members, too, so it is very difficult. We are already on three committees.

Mr. Bell: Mrs. Meslin, what about some time at the end of March or early April?

Mrs. Meslin: When I checked with the clerk, he indicated to me that at the end of March, Mr. Philip is not there, nor is Mr. Morin available. It becomes a problem with committees.

Mr. Philip: We are free the first week in April. We have sent for calendars for Mr. Hayes and me, because we did not realize we were doing this.

Mr. Chairman: The standing committee on social development, the standing committee on general government, the standing committee on resources development and the select committee on energy are meeting on April 1.

Mrs. Meslin: April 1? Dr. Hill is not available the month of April.

Mr. Bell: He is not available the month of April?

The purpose of the tabling of these reports is to have them in and heard and reported on by the time the House gets back. It is obvious, Mr. Chairman and members, that we do not have the luxury of having everybody there. While I know it is not a circumstance that you want to go back to--that is, considering these matters in the absence of the Ombudsman--you have done it before, not with Dr. Hill but with certain of his predecessors. What would be your reaction if the committee were to meet some time when Dr. Hill is not available?

Mrs. Meslin: It is not for me to say. It is for Dr. Hill.

Mr. Bell: Is it his preference that he be here?

Mr. Shymko: I think so.

10:20 a.m.

Mr. Bell: What if we just cannot arrange it, though?

Mr. Philip: We have done that before. Basically, the contents of the reports are not those dealing with the policy of the Ombudsman; they deal with special reports on his findings, do they not? Invariably, his staff carry those anyway with him as a backup. So I do not see why we need Dr. Hill here, since his staff usually carry that type of report anyway. If it were a report dealing with recommendations for the extension of the office or the powers of the Ombudsman, then we could not do it without him. However, on the specific content of his findings, there is no reason we should not have it in April.

Mr. Bell: The problem is that March is out.

Mr. Shymko: Why is March out?

Mr. Bell: Because of the combination of other committees' scheduled hearings and the March break.

Mr. Shymko: Is that the March break?

Mr. Bell: The March break is the week of March 10. There are also the particular schedules of committee members who are not available for some portion.

Mr. Shymko: If it is a matter of one or two committee members who may not be present, they can always have other people replace them.

Mr. Morin: We do not have them, really.

Mr. Shymko: You simply do not have them?

Mr. Morin: That is right.

Mr. Hennessy: You should have got more members elected.

Mr. Bell: You have got the five most active committees meeting in the month of March, the committees that have the largest membership, and they have travel arrangements. The March break kills it. So I do not think you have a choice, members, but to look to April.

It is a question of weighing the interests. Which is the greater interest: to have it done and reported on by the time the House comes back, or to run the risk that you will not be given permission by the House when it comes back to sit for a day and a half or two days to deal with this? I think you are looking at May or June by the time that happens, and then you are in almost to--

Mr. Shymko: Mr. Chairman, it is important that we go through these cases before the House resumes its session. I suggest that maybe we could try to see whether the Ombudsman could look at his commitments for April and make an effort to be here.

Mrs. Meslin: He is in Europe for the month of April.

Mr. Shymko: Is he in Europe for the entire month?

Mrs. Meslin: Yes.

Mr. Epp: May I make a suggestion? The dates that were suggested earlier were March 6 and 7. Mr. Morin indicated that we have difficulty with members. If we were to make that the evening of the sixth and sit on the seventh, we would probably have enough members.

Mr. Philip: Mr. Epp, you are not listening to what we are saying. We are saying that there is a New Democratic Party caucus on those dates.

Mr. Bell: You cannot get a quorum on the sixth and the seventh.

Mr. Philip: The solution is that you do not sit when one of the parties is having its meeting.

Mr. Bell: We cannot get a quorum.

Mr. Philip: However, the first week in April is fine with Mr. Morin and it is fine with--

Mr. Shymko: Can we again ask the Ombudsman? I do not know his schedule in Europe, but if it means that he leaves at the beginning of April and if we are ready to meet at the beginning of April, perhaps he could delay his trip by a day or two, if that is possible, because the Ombudsman is very sensitive to his mandate, the role of this committee and the importance of his presence. I think he could make an effort, if it is possible--or a sacrifice, if I may describe it that way. If the beginning of his trip is really at the beginning of April and if we are ready to meet on the first, second or third day, if such arrangements could be made, I think they would be conducive both to his mandate and to the importance of this committee's wishes in deliberating on the two cases before the House resumes its session.

Mr. Bell: Mrs. Meslin, are you able to comment on that? Are his travel plans fixed as per day of departure?

Mrs. Meslin: My understanding is that he will be flying out on Thursday night.

Mr. Bell: Which is?

Mrs. Meslin: The 27th.

Mr. Bell: Of March.

Mr. Chairman: That is just before Easter.

Mrs. Meslin: Yes.

Mr. Chairman: Before Good Friday.

Mrs. Meslin: Yes.

Mr. Bell: When does he return?

Mrs. Meslin: The end of April. He said he would be back on April 30.

Mr. Bell: All right. I know you do not want to speak for him and do not, but knowing him--

Mr. Shymko: May I just conclude? If that is the case, notwithstanding the importance of the presence of the Ombudsman, I think we would have to proceed in his absence and have the executive director replace him.

Mr. Bell: What I was about to say was that, knowing him as as we do, given the choices of waiting for him to return and not dealing with it until the House gets back, it would seem to me that he would opt for the latter. I know he does want to appear before the committee on all of these matters, as he should wherever possible, for obvious reasons; but given the very limited choices and the need to have it reported on by April 22, I do not think we have any choice but to deal with it in his absence.

Mrs. Meslin: The committee has to make its decision.

Mr. Bell: Yes.

Mr. Philip: Mrs. Meslin, how much time do you think we will need? One or two days?

Mrs. Meslin: Certainly a day and a half or two.

Mr. Philip: So we should book two days.

Mrs. Meslin: We have two cases, and I am hopeful that one will take only a half a day. However, as you know, those things sometimes tend to stretch out.

Mr. Bell: If I may respond, because of the nature of the special report, I think we should set aside no less than two days, finish consideration of the matters in public and then immediately adjourn and write the report.

Mrs. Meslin: Since we are discussing dates, I would like to ask the committee whether they are going to require the Ombudsman to discuss jurisdiction at any time--at one point we thought we would be able to put it on at that time--or is the committee going to do that at an entirely different time?

Mr. Bell: That is one of the other items we want to discuss with you.

Mrs. Meslin: It has some bearing. If you decide to lump it in with the special reports, then you have an additional problem because there is no way the Ombudsman would not be present at a discussion of jurisdiction.

Mr. Bell: Yes. I do not think we have the luxury of lumping them together in view of these schedules. In the light of what you have said, of course, the committee would not consider the matter of jurisdiction without the Ombudsman present. That means the committee cannot attend to it before May, and the House will already be back. I do not think anybody in this room would hazard a guess about when and if the House will give the committee permission to sit concurrently, so I think we have to deal with the time that is available before April 22.

Mr. Philip: How would it be if I were to expedite it by moving that the committee sit April 1, 2 and, if necessary, April 3 to deal with the special reports of the Ombudsman?

Mr. Bell: That is the first day after Easter Monday.

Mr. Philip: Yes. We do not want to sit on Easter Monday.

Mr. Bell: No. We will not get in the door, will we?

Mr. Shymko: That makes a lot of sense. I have no problem with that. Do you?

Mr. Baetz: None.

Mr. Philip: Is there anybody who has any problems with that? Mr. Hennessy, are you okay on that?

Mr. Hennessy: Yes. I am only a sub on the committee. There is no problem for me.

Mr. Philip: That is fine.

Mr. Morin: Does the committee have the authorization to sit on those days?

Mr. Chairman: Yes, we have.

Mr. Bell: If we can get the members together.

Mr. Chairman: I understand that we have.

Mr. Morin: It is the first, second and third?

Mr. Chairman: Is April 1, 2 and 3 favourable to all the committee members? If so, we will set April 1, 2 and 3 aside for meetings.

Mr. Bell: Okay.

Mr. Philip: May I just ask a question concerning Thursday? Perhaps it might be a suggestion to the committee. Mrs. Meslin, it seems to me that the reason we suggested a tour of the Ombudsman's office for February 25 is that there are some new members on the committee. It seems to me that, much as I enjoy looking at the art work and the furniture in the Ombudsman's office, it is not the best use of my time to go on another tour.

10:30 a.m.

I wonder whether it would be okay for you to conduct your tour from 10 o'clock to 11 o'clock for those members who want to go on a tour of the facilities, and those of us who want to ask questions and deal with some updating on what is happening will meet you at 11 o'clock there.

Mrs. Meslin: I am in the committee's hands. Thursday is fine.

Mr. Philip: Tuesday.

Mrs. Meslin: Tuesday, February 25, is fine, and I will manage whatever you would prefer.

Mr. Philip: It does not seem like the best use of my time to go on another art tour of the Ombudsman's office.

Mrs. Meslin: They did not think it was an art tour the last time.

Mr. Shymko: I am surprised that Mr. Philip is not appreciative of the quality of the art exhibits in the Ombudsman's office. I am a great fan of the art community.

Mr. Philip: I am very appreciative. I also have the highest case load of any MPP and I want to deal with some problems of my constituents that morning.

Mr. Shymko: I understand from the comments I have heard that there are some changes in personnel and some interesting information that some of us who met last year are not aware of now. I certainly withdrew my original comments yesterday about the need for me to visit the Ombudsman's office. It makes some sense even for those of us who were members of the committee for a number of years to go through the briefing and see some of these changes.

Mr. Philip: Can I assume, then, that there will be a tour of the plant, if I may use that word, from 10 o'clock to 11 o'clock, and then at 11 o'clock the briefing will start in the boardroom? Is that okay?

Mr. Chairman: Is that satisfactory to the committee?

Mr. Shymko: We accommodate Mr. Philip all the time.

Interjections.

Mr. Morin: I have to be in Sudbury with another committee on February 25.

Mrs. Meslin: You know what the office is like.

Mr. Bell: If there is a person who can miss that tour, it is you.

Mrs. Meslin: Unless you want the lunch.

Mr. Philip: Unless you are going to be on the committee, why waste your time? We are not going to take any votes or anything at that time, so you do not need to bother.

Mr. Shymko: I wonder whether we have finished that discussion, because I have another item on the schedule for next week that I wanted to raise. May I do this now?

Mr. Chairman: Yes.

Mr. Shymko: I commented on this yesterday. In the previous government and under the previous chairman, this committee had some serious problems in going through the financial and administrative books of the Office of the Ombudsman. Normally they went to another committee, and it took almost a year of confrontation, as you recall, Mrs. Meslin, to have this committee go through the estimates of the Office of the Ombudsman.

When finally this right for the committee to go through the estimates of the Ombudsman was agreed to by the powers that be, we never did go through the estimates. I understand the scheduling problems of the House leader in getting a number of estimates from a number of ministries passed through committee without deliberations. However, in the light of the history of the confrontation we have had and the importance we attach to this, although the estimates have already been passed, I want to take a look at them in some detail and discuss them on Thursday, February 27.

Notwithstanding the circumstances that we were not able to do this as normally is foreseen, I still feel it is very important that we do this on Thursday, February 27, for half a day.

Mr. Philip: I would like Mr. Decker to pass comment because I do not believe we can deal with estimates that have been passed, can we?

Mr. Shymko: We can deal with any topic we want, Mr. Chairman.

Mr. Chairman: That is up to the committee; so I am told by the clerk.

Mr. Philip: As our party's critic, I would normally be consulted about when we would deal with any set of estimates on a date agreed to. On that date I am in the standing committee on public accounts to deal with the matter of the Urban Transportation Development Corp.

If you wish to do that, then there are two questions. First, do you wish to deal with it on the record? If so, you will need Hansard. If that is your wish, I would feel much more comfortable if we dealt with them that first week in April.

Mr. Shymko: I just wonder, since we have been very accommodating to certain members, whether there would be any

possibility for Mr. Philip to accommodate the conflict that he has for at least two hours on Thursday. Maybe we could start earlier. I am sure this could be done. We could meet from 9 a.m. to 11 a.m. or half a day from 10 a.m. to 12 noon. Would that be possible if a request were made, if the majority of committee members feel that--

Mr. Philip: It affects Mr. Epp the same way. He is in the standing committee on public accounts.

Mr. Shymko: I would like to hear from Mr. Epp as well.

Mr. Chairman: Would there be any merit to switching the days? Have the tour on Thursday and the estimates on Tuesday.

Mr. Shymko: It does not matter.

Mrs. Meslin: That is a bit of a problem for us. We would have to prepare some briefing material for the committee, and although Thursday is tough, it gives us a little more time. If you are going to do it, it is easier later than earlier.

Mr. Shymko: We could accommodate Mr. Philip by doing it this way.

Mr. Philip: It would give you a lot more time if we did it in April, would it not?

Mrs. Meslin: Oh, yes. Certainly.

Mr. Philip: It seems reasonable to give the Ombudsman some advance notice.

Mr. Shymko: I made that request. If the committee feels that Thursday is not appropriate, that you want to do it in April, that is fine. I just thought the matter of looking over the estimates and going over the books, so to speak, would be very important for us.

Mr. Philip: That means, then, that you would schedule it for Friday, April 4?

Mrs. Meslin: Why not April 3?

Mr. Shymko: Why not April 3?

Mr. Bell: We have enough--

Mr. Shymko: Yes, I think we have enough time.

Mr. Bell: Mr. Chairman, for the purpose of the record, what you will be doing at that time is not to consider and approve the estimates; that has been done. I do not think the committee has received the estimates material that it had in previous years, but I assume it is available.

If Mrs. Meslin and her staff can organize sufficient copies in time for the April sittings, what it is important for you to do is to become current on what the budget reveals about the office's

organization and operation, as you do in all circumstances. I do not foresee that the consideration would be the estimates type of consideration; it would be questions flowing from the information about staffing, numbers, organization, etc., that may be revealed.

I agree with Mr. Shymko. As a matter of record, the committee should have the copies of those estimates for its records for consistency and continuity. Otherwise, for example, when you come to approve the estimates in the next year--

Mr. Shymko: You cannot make any comparisons.

Mr. Bell: There is a gap, that is right. You have to have that material, in any event. I do not think it hurts if you want to limit it to the three hours or even less that would be otherwise allotted. It has relevance, by the way, to some other issues you are going to be considering.

Mrs. Meslin: Mr. Chairman, I just have one other thing to bring to your attention. Of course, estimates are not cases, and Dr. Hill will not be here then, either. If, flowing from the estimates discussion, you have any policy questions, you raise another problem without the Ombudsman. Sorry; I just thought of it.

Mr. Bell: Mrs. Meslin, how difficult is it? You mentioned briefing material, but surely all that each committee member would need would be a copy of the estimates that were submitted.

Interjection.

Mr. Bell: Mr. Decker has it already. Is there anything else?

Mr. Newman: Who is running the show? Is Dr. Hill running the show or are we?

Interjections.

10:40 a.m.

Mr. Shymko: I did not want to be quite as blunt as Mr. Newman, but our mandate is to review the operation of the Office of the Ombudsman, and I still go back to the commitments of that trip to Europe for more than a month.

Mr. Newman: It is his responsibility to be here when that happens.

Mr. Shymko: I do not know what the purpose of the trip is and I do not know how extensive it is or what commitments have been made, but I certainly would appreciate it if we did not accept the trip and your quoting of the dates as a fait accompli, without any right of review or consideration, in the light of what this committee has decided and in the light of the meeting of this committee. I am sure the Ombudsman was not aware of these developments when he was planning the trip.

We should give the Ombudsman the opportunity so that people out there in the public do not conclude that he is insensitive to his mandate and to appearing before this committee on very important issues. We should give him an opportunity to review his plans and to try to accommodate his trip and his plans to the meeting of this committee. It is only fair that he be made aware of this and that a request be made to him.

If it is because of some commitment--if he is a key speaker on April 1 at some big conference in Europe that cannot be cancelled--it will be understood and accepted by this committee. However, I concur with Mr. Newman that there is a responsibility, which I know the Ombudsman shares, to appear before this committee on very important issues, both in the operation of his office and on policies. He should be given an opportunity to review his trip and the dates, and if it is possible to accommodate us without upsetting some of his commitments too much, I would appreciate it if he were to do so.

Mr. Hennessy: Our time is limited and I would hate to think that, if we did not want to meet with the Ombudsman, it could very well get into the media that elected members were too busy to hear the report of the Ombudsman.

It is a two-way street; that is all. Our time is limited. We have the time to meet. Personally I am not too happy. Trip or no trip, I do not think we are working for the Ombudsman; he is working for us. Unless I am mistaken, that is what I was elected for. I have a responsibility to the people of my riding. The Ombudsman should be here to meet with us and discuss this. He can always make the trip a day or two later. If we cannot do it now, when are we going to do it? We will have to wait until the next time we have a break.

Mr. Philip: Mrs. Meslin has heard that, if possible, we would like the Ombudsman to look at our schedule. She will be at the subcommittee and planning meeting tomorrow morning, and I think she understands the sentiments of the committee.

At the same time, I would add a footnote that it is quite common for committees to accommodate cabinet ministers who may be out of town on special arrangements, particularly out of the country. I do not see why we should not have some empathy for the fact that the Ombudsman has made a schedule.

It was not his fault that the Legislature reconvened and did not have its normal break at the normal time. We did not give him notice; we were not able to give him notice until the House leaders decided when we could sit. So there has to be some empathy for and understanding of his position and of any commitments he may have made in Europe. Let us deal with it in the subcommittee tomorrow morning and report back.

Mr. Baetz: I have one comment and a question. The comment relates back to Mr. Philip's observation that committees often negotiate with ministers who have a commitment abroad. The converse is also true, that ministers very seriously negotiate with committees. If a committee, especially in such an important

thing as estimates, feels the minister ought to be there, I suspect most ministers would say that is always a first priority. The first priority is always here, not off someplace else.

The other thing I wanted to say is in the form of a question, and maybe I should know the answer. Precisely what is our mandate on the matter of estimates? Estimates are a pretty damned important thing, but precisely what is the mandate of this committee vis-à-vis the estimates of the Ombudsman? Do we have a responsibility there?

Mr. Bell: Yes. The House has referred the estimates of the Ombudsman to this committee for approval. It is parallel with public accounts, only, because of the specific nature of the Ombudsman's operation and the committee's operation, rather than duplicate effort, they gave it to this committee. Public accounts used to approve the estimates.

Mr. Baetz: Okay, but now we have that responsibility. I think it is a very important responsibility. The Ombudsman should know it, we should know it and we should get on with the job.

Mr. Philip: They have been passed for this year.

Mr. Shymko: We know that.

Mr. Bell: The problem is that they have already been passed.

Mr. Baetz: Who passed them?

Mr. Bell: The House passed them.

Mr. Philip: The House passed all outstanding estimates.

Mr. Shymko: Notwithstanding, we should take a look at that material.

Mr. Baetz: I could ask another question: Why did the House pass them when we have the mandate? I am sorry that I do not know the answers.

Mr. Philip: The answer is that the committees could not sit then because the House would have had to stay sitting.

Mr. Epp: It happens all the time. They did not have enough hours.

Mr. Bell: No. It is not just this committee; it is every committee.

Mr. Baetz: So it was a pro forma kind of arrangement.

Mr. Epp: Exactly.

Mr. Baetz: Then I guess I go back to this: I think this committee does have a responsibility not just to take a pro forma look at these estimates but to make a detailed review, an examination.

Mr. Shymko: Even more.

Mr. Epp: You cannot pass them now.

Mr. Baetz: I realize that technically.

Mr. Philip: Can we report back to the subcommittee--

Mr. Bell: May I make a suggestion? In the scheme of things, if the House had not done what it did, probably today we would be considering the estimates, so I do not think, with respect, that it lies in anyone's mouth to say we are not ready. We have been ready for months. We did not have dates, etc. I think the most practical solution is next Wednesday. It is a suggestion. It is easy for me to say because I will not be here.

Mr. Shymko: Because of the conflict that Mr. Philip and, I believe, Mr. Epp have on Thursday, why not meet Tuesday to go over the estimates and make Thursday a visit to the Ombudsman's office? There are no big commitments to visiting and touring the Ombudsman's office.

Mr. Chairman: Would that be satisfactory?

Mr. Shymko: I referred to your suggestion, Mr. Chairman, with great respect, since you originally said it.

Mr. Chairman: Is that acceptable to the committee?

Mr. Shymko: If you want this as a formal motion, I will move formally that we make the appropriate change.

Mr. Chairman: Apparently a motion is not required if the committee is in favour of discussing the estimates on Tuesday and touring the Ombudsman's office on Thursday.

Mr. Bell: The next item I have on the list is communications from the public. There is one matter that Mrs. Meslin and I can speak about afterwards, and she can address the subcommittee tomorrow morning. I have a communication from one of the constituents of the Attorney General (Mr. Scott).

The next matter, before we get to the final item--that is a discussion of what process might be appropriate to consider the issue of expanded jurisdiction--is that when we adjourn formally this morning and Hansard turns off, I would like you to remain with Mrs. Meslin for five minutes so that we might bring her up to speed on a discussion we had yesterday respecting a matter that affects legal counsel. I think Mrs. Meslin should know in general terms what the committee thinks about it to date and take it back to Dr. Hill for discussion and consideration at earliest convenience.

The last item, Mrs. Meslin--and the committee does not intend to deal in any way with the substance or the merit of the issue, but it was discussed last September and it will not come as any surprise to you or to Dr. Hill--is that the committee does intend to address the issue of expansion of jurisdiction, be it Dr. Hill's jurisdiction or the concept of Ombudsman.

10:50 a.m.

What the committee would like to hear from your office today or at some appropriate time next week is some ideas on what process the committee might engage in to properly consider that issue, including the issue of what or whom the committee should invite submissions from; in that I would include ministers of the crown.

On the last occasion when the issue was raised, the committee on its own sought comments from members through a simple mailing and received an appreciable, certainly a representative, percentage. At the least, members should be invited to make their comments in whatever form they consider appropriate, subject to the scheduling of the committee.

The other issue on which we would appreciate your views is whether or to what extent the committee should gather background or briefing information and what is the best source of that information. For example, your office has one of the best libraries of Ombudsman texts and materials that I am aware of. Can we utilize the facilities of your office in some way to put together some briefing materials, for example, listing, defining and describing the jurisdictions worldwide which have a wider jurisdiction than your office does, particularly in the area of local governments, hospitals, police forces or commissions?

Those are some general things. I would welcome your comments now, or you might want to reserve them until next week when you meet the committee formally or informally.

Mrs. Meslin: I can make two brief comments. The Ombudsman has offered the committee the use of staff to prepare any briefing materials you feel would be helpful. I am sure that would present no problem. We could put together material. The only question I might ask to take it back to Dr. Hill is, when you ask for his suggestions about what process the committee might engage in, he was awaiting your report for some guidance about what the committee had decided it would look at. I do not think he thought he would be giving you suggestions before he had your committee report.

Mr. Bell: I do not think he should feel constrained to make comments before the report. In the report you will see a statement of principle by this committee that now is the time to address the issue. Beyond that, it is open season. There is no determination by the committee as of yet what the process will be, who is involved and how long it will take. I can understand his reservation, but--

Mrs. Meslin: He was probably waiting for the report because if the committee had said it was not prepared to discuss any expansion of jurisdiction at this time, there would have been no need for him to prepare anything.

Mr. Epp: I have some difficulty with this. I spoke to this briefly yesterday. If I am correct, other members of this committee and of the Legislature have difficulty with it. Implicit

in this is the thought that if some need could be shown for an expansion and elaboration of the Ombudsman's office, then this committee would be prepared to recommend it to the Legislature.

First, in my almost nine years here, I have not seen any need for expansion. Second, I am not prepared to vote one additional cent to the Ombudsman to expand the jurisdiction of the Ombudsman. We now have a budget of more than \$6 million. We have about 125 people involved there. To go through an exercise of this nature without the committee being prepared to recommend additional funds is an exercise in frustration.

If we as a committee are prepared to recommend additional funds--if you can find some need, go ahead and have the study. But if you have already made up your mind that you are not going to expand the office of the Ombudsman, why go through it? For the sake of going through it? To see if you can find some need out there?

In eight and a half years, I have yet to receive one letter from any place in the province saying we should expand the office of the Ombudsman into any other jurisdiction. I am sure some member here can resurrect a letter in support of that, but I have yet to receive one from the 80,000 or 90,000 people who live in my constituency or from the eight to nine million people who live in this province.

I do not know why we are going through this exercise. I do not want to expand it, and I know other members do not want to expand it. My feeling against expansion is shared by a good number of members, so why go through this exercise? I know it is shared by a number of members of this committee.

Mr. Shymko: Through Mr. Epp's remarks, Mrs. Meslin is hearing a sentiment that I am sure echoes the views of many members of the Legislature--I will not say it is the majority; it may well be the majority--who share those concerns.

As Mr. Bell said in relation to the research and material, it is almost an education process that has to be done with our members. Never mind those elected in 1981, many members who have been members of the assembly for a number of years are not very clear on the operation of the Ombudsman's office. There is an education process to be done. Unless that is done, I see no hope whatsoever of the passage of an amendment to the Ombudsman Act, which I believe will be the process for any expansion of his jurisdiction. Am I correct in assuming that?

Mr. Bell: You could only expand jurisdiction by legislation.

Mr. Shymko: By legislation. We have had eight years of trying to amend the Ombudsman Act in areas unrelated to expansion of jurisdiction but where there were some other concerns. The Attorney General and the cabinet have been sitting on these things for almost eight years, and the aspect the expansion of jurisdiction was not even a part and parcel of it. There were other concerns that warranted such amendments.

I see a real problem. Because there is no hope of the expansion going through, we cannot say, "Therefore, let us not discuss it, solicit opinions or hold public hearings." That conclusion, on the assumption that something will fail, is wrong. As legislators, we pass many bills and go through a lot of processes, but never on the assumption that something will fail. We propose some things. There are even draft bills introduced prior to a bill being introduced. We may look at draft legislation, which is not as binding, perhaps a white paper or something, on the Ombudsman.

11 a.m.

Where I disagree with Mr. Epp is if there is any insinuation that we should stop discussing this because we forecast failure. We should discuss it. The actual discussion of the issue of expansion will be a big information and educational venture for all of us as members of the Legislature and for the public. I feel it is important. Whatever the results, I am sure we will accept them. But there is a lot of information and there is a big vacuum out there. You know that, because we went to a cable show where I volunteered my services, as I am sure other members will, simply to inform the public about the existence of the office and what it is doing.

I will support any recommendation--and we have one that you will see from this committee--that suggests discussion and some form of public hearings. I am all for that. However, I warn you that what Mr. Epp is saying is very true; it is the reality out here in the House.

Mr. Philip: There are two things. One is that the committee did make a decision, which will appear in the report. That decision was passed yesterday and is contained in the report.

Mr. Morin: It was not passed.

Mr. Philip: It was passed yesterday. There were no objections and it was passed, so do not give me that nonsense that it was not passed. It cannot be reopened. It has been passed.

Notwithstanding what is in that report--and it was done in camera--there is absolutely nothing that prohibits the Ombudsman from commenting and giving advice to the committee on his views.

I personally think there are at least three areas that should be looked at. One is the jurisdiction over hospitals, and the second is children's aid societies. The third is the one where the Ombudsman has had some jurisdictional dispute, namely, the Ontario new home warranties plan, where he clearly needs some authority; we want to make sure that is spelled out so we do not have a further recurrence of that kind of thing.

I would feel quite comfortable if in his next report the Ombudsman would give some guidance to the committee, based on the thousands of intakes you people have, on where he feels frustrated that he cannot act and where there is some human need out there. It may be there will be certain stages, there may need to be a

timetable of how things are phased in, if his authority is expanded. We have to look at all that. We have to look at the financial cost of that.

We should also look at the financial cost of not expanding the Office of the Ombudsman. In the House, members were frustrated, and the public was frustrated, at some of the atrocities that appear to have been committed against children. There was no way of getting to the bottom of it in an independent, nonpartisan, nonpolitical way. I worry about those costs as well.

Mr. Epp: With due respect, can you enlighten me with respect to these atrocities you are referring to that are occurring in Ontario?

Mr. Philip: Read Hansard. I am not going to go through Hansard. If you do not pay attention in the House, that is not my problem.

Mr. Epp: You sure have a way of insulting everybody who works with you. You have a monopoly on that.

Mr. Hayes: In answer to Mr. Epp's statement about not getting any letters and asking if the need is out there, I think it was made quite clear in the first meeting I came to as a new member. There were members who had been in the Legislature for years and did not know a heck of a lot about the Ombudsman's office or his role.

Probably one of the reasons we are not receiving a lot of letters or requests for help is the lack of knowledge on the part of a lot of people, especially in southwestern Ontario, about the Ombudsman's office.

The other thing is, how can a member sit here and say, "Even if there is a need for it, I am against it; we are not going to spend the money to do something about it"? That is contradictory. I do not know for sure whether the real need is out there, but I know Dr. Hill has indicated there is a need, as Mr. Philip stated previously. It is worth while for us to investigate and study this issue of expanding the jurisdiction of the Ombudsman.

Mr. Bell: May I make a suggestion? Mrs. Meslin, it seems to me, in order of priority with Dr. Hill, the anticipated amendments to the act are number one. The issue of whether there is a need for expansion ranks behind that, whether it be number two or down the list.

As a matter of record, this committee is already recommending the bill be tabled. I do not have any current information. I understood, as late as last November or December, that there was a bill and it was a question of scheduling of legislation. That is the only thing that has kept it from being tabled. I understand that when it is tabled, it will be referred to this committee for clause-by-clause review.

It would seem to me it would be unfortunate if the issue of expansion of jurisdiction somehow distracted from an appropriate

consideration of the bill when it is tabled. Although you can expand jurisdiction only by amendment, there will be some substantive amendments in the act that will require some particular consideration.

I would like to suggest, in terms of this committee's timing, that it order its priority to that of the Ombudsman. As and when the bill is tabled, it should commit to a schedule as quickly as possible for clause-by-clause review. When that is concluded and the process is completed, the committee should then address the issue of expansion.

It would be very unfortunate if the committee undertook a study and review of expansion of jurisdiction in the middle of this amended legislation. There would be a distraction. Let us be quite frank, it might have an adverse impact on the bill that is now expected and on any particular review of issues. That would be very unfortunate.

Mr. Shymko: I do not know whether I should share the views of our counsel in this.

Mr. Bell: Be careful.

Mr. Shymko: I have not seen the bill. There may be something in the bill that may be related or may necessitate some form of expansion, or jurisdictional areas may be part and parcel of some of the amendments to the Ombudsman Act. I have not seen the bill.

I see no problem if prior to going to clause-by-clause review, we ask some witnesses to come and comment on some of the aspects of those amendments. If in the process of commenting any of those witnesses talk about expansion, you cannot stop that. It would even be beneficial if we started discussing that entire issue even through that particular bill. You cannot stop people from talking.

Mr. Bell: Certainly. You address any issue raised by the amendments that touches upon or directly involves expanded jurisdiction. That is not what I was getting at. It would be unfortunate if this committee undertook a study or review of expanded jurisdiction prior to the legislation being tabled, because it might very well be distracting.

Mr. Shymko: That is different.

Mr. Bell: We have demonstrated here today that there are differing views. Those may be in the extreme. There may be polarity. That type of discussion is not conducive to clause-by-clause review of amendments to an important piece of legislation. You might want to decide, when the bill is tabled, to start your review concurrently. However, leave that decision for today. In practical terms, you are not going to get into this jurisdiction issue before May or June or whenever.

Mr. Shymko: At least before the bill comes in.

Mr. Bell: By then we might have the legislation. It is a suggestion, in any event.

11:10 a.m.

Mr. Baetz: We speak of this draft bill. Are you aware where it is at?

Mr. Bell: My last information on it was last fall, that there was a bill. I understood it was in final form. It is a question of scheduling that has kept it from the House to date.

Mr. Shymko: Do I understand you--

Mr. Bell: I do not know any particulars of the bill. I do not know whether there are any issues of jurisdiction or how extensive the amendments are.

Mr. Baetz: However, you had definite information that (a) there was a bill in draft form and (b) it was ready to go, only it was waiting in the assembly line. Was that it?

Mr. Bell: Yes.

Mrs. Meslin: That is not my understanding.

Mr. Baetz: What is yours?

Mrs. Meslin: My understanding is that a draft bill is being given to the Attorney General (Mr. Scott) for him to look over to decide whether he is in agreement or whether he has any additional questions, but that the policy people at the Attorney General's office had hoped that would be given to him during this break for him to read through. They were aiming towards having a bill for the spring, but then it would be a problem of scheduling.

Mr. Bell: That is not entirely different from my understanding. I understood that process involving the Attorney General had already taken place, but if it has not, it is--

Mr. Baetz: At least, we can conclude it is not on the top priority as an urgent matter of state.

Mr. Bell: No. It has not been for the past three years.

Mr. Baetz: Its status has not really changed in the past six or eight months?

Mr. Bell: Your information is more current than mine. I guess not.

Mr. Shymko: Maybe some of our Liberal colleagues could discuss things with the Attorney General and suggest that a draft bill be presented first--not the actual bill that would be tabled for first reading, but a draft bill that we could go through prior to finalizing it, presenting it to cabinet and first reading.

Mr. Bell: Nice try.

Mr. Shymko: Perhaps that makes Mr. Epp much more comfortable in the flexibility that he will have in addressing some issues. I do not know.

Mr. Epp: (Inaudible) expansion.

Mr. Shymko: It has been done by a number of ministers who, instead of presenting a bill for first reading, go to a committee with a draft bill, and there is a free-for-all discussion.

Mr. Morin: Perhaps we should ask the Ombudsman to submit his own report on why he feels he should extend, why he feels he should have jurisdiction over local governments, boards of educations or hospitals.

Mr. Shymko: He has done it. You will recall he did it in September--

Mr. Morin: Yes, but I am talking about doing it in a written form--a report based on statistics, based on facts. Following that report, we could look into it ourselves and then, if necessary, expand the study. That is a suggestion.

Mr. Shymko: I have no problem with that.

Mr. Bell: Dr. Hill declined to state his position. As for the expansion of his office, he did give the committee a lot of particulars, reasons and, in some cases, arguments why the question should be put at this time. The committee agreed that after eight years since it was last raised, it is time to put the question.

Do you foresee any difficulty for Dr. Hill if the committee asks him to state his point of view in a written, formal way?

Mrs. Meslin: I do not think I can answer for Dr. Hill.

Mr. Bell: My concern remains that this issue not distract the issue of the expected bill. That would be unfortunate for everyone concerned. I agree with Mr. Shymko. If you cannot divorce the consideration of both when you have the bill before you, then you do not do it; you invite that discussion as appropriate then.

That act has to be amended in a number of ways, and I do not think anybody disagrees with many of the needed amendments. It would be a shame if that were delayed or otherwise affected by something else.

Mr. Shymko: If I may again comment, just thinking about the remarks Mr. Morin has made, having been in the capacity of an ombudsman for northern Ontario, I am sure he is well versed and experienced in his assessment of the procedure as well in addressing the expansion of jurisdiction.

Maybe because of the whole confusion surrounding this, the Ombudsman made public statements about expansion of jurisdiction,

which hit the papers last year, I recall. Prior to the meetings of our committee, we have seen examples of that where the press had addressed the issue, soliciting both negative and positive reactions on this.

Second, he has addressed it before this committee only as part and parcel of his introductory remarks prior to our deliberations; so it was part of a speech to the members of the committee. However, there has never been a researched, documented, argued report or case study made by the Ombudsman which could be used for this committee with legislators, with cabinet and with the public. Maybe we should pursue that.

The more I think about Mr. Morin's suggestion, the more sense it makes. We should in a clear, concise way divorce amendments to the Ombudsman Act, which may be coming through a bill that is in draft form, and other issues; but clearly, exclusively, in an isolated fashion, we should address the whole issue of expansion of his jurisdiction. We should argue and document the case, instead of going at it in an amateurish way--I am sorry; I am not saying it is amateurish, but giving our researcher a time frame of two days to present a case study is not fair for us to make a decision next week when we have asked our committee's researcher to present a case on the expansion, which I believe is the request we have made. It is unfair even for a researcher in a short frame of time to research the topic.

Ms. Madisso: I will give information--only that.

Mr. Shymko: Only information. However, we are already dwelling in that area by the request that this committee has made to the researcher. It would make a lot of sense if we could pursue that. Mr. Chairman, I do not know whether you want this discussed now. Perhaps Mr. Bell would like to comment on the validity and rationale of such a suggestion that could be passed on and given to the Ombudsman for consideration.

Mr. Bell: Dr. Hill should be asked to state his position. He has made a very good case in support of putting the question. However, now that the committee has decided it will consider the issue, we should hear from him with specific reasons why in his opinion the jurisdiction should be expanded. I know he will not limit himself to just a consideration of whether his office should be expanded but whether the concept of ombudsmen generally should be expanded. That is a start.

Mr. Baetz: Along that line of thought, I am just wondering whether the first step is to ask Dr. Hill to spell out to this committee why he thinks there should be some expansion and in which areas. My memory is a little vague, but as I recall his comments to this committee last September, he did talk about the possibility of expanding; I guess he was talking about expanding to municipal jurisdictions and so on. My memory is that having kind of let this thing go as a trial balloon, what he was going back to was saying, "Before we expand, there are a lot of other things I want to do within the present mandate, which needs buffers and strengthening." That is my memory. It may not be the right one.

11:20 a.m.

He did speak of possible expansion--hospitals were mentioned, as were municipalities, children's aid societies and so on--but having said that, and I am sure somebody here can confirm my memory one way or another, he was saying, "The more immediate concern I have is to really strengthen the organization to carry out the duties that have been assigned to me." I would appreciate a comment on that. Shake my memory. I do not know.

Mrs. Meslin: My understanding was that what Dr. Hill had put in his annual report before this committee was the suggestion that after 10 years in operation, the committee should consider whether jurisdiction should be expanded. He suggested a number of areas that had come to his attention. What he had asked for was guidance from the committee and the Legislature about how and whether that should be discussed. The part about strengthening his office is correct. He did not tie the two together, though, I do not think.

Mr. Baetz: If he gave the ball to us, maybe it is in our court at this point. Maybe we ought to be taking a look at what he really said to us; maybe we ought to look at the minutes again from last September.

Mr. Bell: What he did say to us was as Mrs. Meslin indicated. It is fair to ask for guidance. The committee has made a decision that it is timely to put the question. Mr. Morin has made the suggestion that the first order of business under the heading of guidance or direction is, "You give us your views." That is getting it from the horse's mouth, so to speak. Thinking out loud, one might seek the views of Don Morand as to that issue. I am sure he has views and would be very happy to express them to the committee.

Mr. Shymko: And Gilles Morin, who was an ombudsman as well.

Mr. Philip: Or Karl Friedman.

Mr. Bell: Or any Ombudsman, present or former, who has views and experience. However, one of the best methods to assist this committee is to seek and obtain the insights of the person who currently holds the office.

As an aside, I will not be surprised to hear what Dr. Hill's view is because he made such a strong case in September for putting the question. It is easy to assume what it will be, but I am more interested in the reasons why, and as has been discussed this morning, the impact. If you assume the hypothetical, that his office is given an expanded mandate, what is the impact on that office, assuming various scenarios? I believe we heard in September that he did not believe the impact would be significant, but give him the benefit; I would like to see the background leading to that conclusion. When one considers that potentially there are many more complaints emanating from local government activities than there are from provincial government activity, one wonders.

In any event, Mr. Morin's suggestion is quite a good one. I do not think we necessarily have to put any tight time constraints on Dr. Hill to get that to us because, as I say, I think you are going to have the bill to consider before you have this to consider. However, it is something to be worked upon, perhaps for presentation in September.

Mr. Shymko: I do not know which paper it was in, but I do recall someone being quoted as accusing Dr. Hill of empire building or insinuating that a very ambitious man had taken over now and this expansion was part of sort of an empire-building thing. I recall that insinuation was even in the media. He was very sensitive to this and hurt, as a matter of fact, by it.

I am not saying the fact that it is in the media influences Mr. Epp and other members of the Legislature, because Mr. Epp is very responsible in terms of the fiscal policies and our responsibilities to the taxpayers and the obvious implications of expanding the budget from \$6 million to \$10 million or whatever it is. Perhaps the media are impacting in a very unfair and unjust way.

Mr. Philip: That was Claire Hoy. He has accused Brian Mulroney of the same thing.

Mr. Shymko: Was it Claire Hoy? It may have been Claire Hoy.

Mr. Philip: For any journalist to be 50 per cent right is--

Mr. Chairman: Is there any further discussion?

Mr. Shymko: He is looking at a different empire now on Parliament Hill.

The committee continued in camera at 11:25 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ORGANIZATION
COMMUNICATIONS FROM PUBLIC

THURSDAY, FEBRUARY 20, 1986

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Cureatz, S. L. (Durham East PC) for Mr. Sheppard

Clerk: Decker, T.

Assistant Clerk: Deller, D.

Staff:

Bell, J., Counsel

Madisso, M., Research Officer, Legislative Research Office

Witness:

From the Office of the Ombudsman:

Meslin, E., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, February 20, 1986

The committee met at 9:20 a.m. in room 228.

ORGANIZATION

Mr. Chairman: We have representatives from all three parties.

Mr. Bell: Mrs. Meslin, do you want to address the committee?

Mrs. Meslin: Yes. I raised the committee's concerns about Dr. Hill's vacation plans and about the difficulties of the committee members with the estimates. He has asked me to advise the committee that he will be at the estimates discussion and he will also alter his vacation plans and be at the discussion in April.

Mr. Baetz: Good.

Mr. Chairman: We are sending letters to the whips alerting them that we want to sit April 1 and 2.

Mr. Philip: Looking at the agenda for April, if we were dealing with a review of the estimates, it would be important to have the Ombudsman there to answer policy questions. Since we have changed it around as a result of Mr. Shymko's sensible suggestion that we deal with the estimates next week on Tuesday, the policy questions will be answered next week and in April we will be dealing with information, that is, policy issues that are normally addressed by the Ombudsman's staff.

I think this committee could show a little flexibility and understanding. The Ombudsman does have two members of his family who are living in Europe. He did not know we were going to hold hearings in April and I do not see any reason why we need the Ombudsman to alter a well-deserved vacation any more than I think we should order Mr. Bell, when he has made vacation plans, to be here next week. We should give the same courtesy to the Ombudsman.

I ask the members of the committee to suggest to Dr. Hill that, while we greatly appreciate his concern and his offer to be with us in April, we will be quite accepting if his staff is here and we will look forward to having him here next week when we deal with his estimates.

Mr. Shymko: I recall Mrs. Meslin mentioning that the Ombudsman agreed to alter his plans. He has not cancelled his trip to Europe, but has accommodated his plans to be here with the committee, being aware that the estimates--

Mrs. Meslin: I made it very clear to him.

Mr. Shymko:: You made it very clear that the estimates would not be the topic of discussions in April?

Mrs. Meslin: Yes.

Mr. Shymko: And that we would deal with them next week?

Mrs. Meslin: Yes.

Mr. Shymko: Having been made aware of that, he still felt he should be here in April for the two days of the meetings?

Mrs. Meslin: Yes.

Mr. Shymko: If that is his decision, I do not know why we should continue to complicate the issue.

Mr. Philip: He may have felt under a compulsion to members of the committee who had asked that he be here and that he reconsider. I am suggesting because we changed the estimates and since it was necessary for him to be here for policy matters that we not place him under that kind of pressure and that we tell him very simply what we all know, that he is not going to be needed in any capacity on the Monday, Tuesday, Wednesday of April.

I fail to see why we should have a man change his vacation plans to be here, if we are not going to require his services. There is nothing we are going to deal with during that period of time that his staff cannot handle. They are all matters related to individual cases denied. We are dealing with the reports.

Mr. Shymko: Could I have a clarification, since we are in a dialogue situation? I want to hear from the chairman and the counsel whether the Ombudsman is not needed, if he himself perceives that he should be here.

Mr. Philip: He did not perceive, Mr. Shymko. He was told to be here by the committee. He changed his mind under that kind of pressure. There is nothing to say that he perceived that he should be here. If he perceived that he should be here, then he would not have asked that he be exempt in the first place.

Mr. Shymko: The Ombudsman is mature enough to decide whether he feels he is needed in this case under these circumstances. We have had a long discussion on this. It is his decision. If he wants to be here, he will be here.

Mr. Philip: You are not listening, Mr. Shymko. There is nothing that says he wants to be here. You held a gun to his head and he agreed.

Mr. Shymko: No one on this committee held a gun to anybody's head.

Mr. McLean: I understand Dr. Hill is going to be here next week. If there are pertinent questions that anybody would like to ask him, they could be asked next week. I would be pleased to have the senior staff here because that is where we are going

to get most of the answers anyway. If he is here, he would not say it but it would probably be a loss of time to him because of the questions. I certainly agree that the staff should be here. If Dr. Hill accepts that, it is quite all right with me.

Mr. Bell: For the record--because I will not be here next week and if this is an attempt to make me feel guilty, it is not working--you just have to go back to the history of the committee and how it dealt with recommendation-denied cases over the years. This committee has probably dealt with upwards of 75 recommendation-denied cases and only about 10 have been in the presence of the Ombudsman. The first and the second Ombudsman chose for whatever reason not to be present when the committee dealt with the cases and the committee dealt with them very well. So did the Ombudsman's staff.

It is because of this committee's policy decision about three years ago that--I will not say it is the only reason Dr. Hill attends. Knowing Dr. Hill as I do, he wants to attend and to participate in the proceedings. That is laudable, and I think the committee's policy is appropriate.

If we are now talking about an exception to the rule for two specific recommendation-denied cases, that may very well be resolved before April 1. That is another matter we should keep in our minds. You just have to look back to the 19 cases that turned into four last September. I think the committee can get along very well without Dr. Hill's personal attendance.

I also think the suggestion to discuss it further with him next week is a very good one, but why does the committee not leave it to Dr. Hill?

Mr. Shymko: That is exactly what I am saying.

Mr. Bell: No, against the background that the committee does not absolutely require him for those days. That is what I suggest you do, but leave the final decision to next week to discuss it with him. That would still give him enough time to organize his travel arrangements accordingly.

Mrs. Meslin: He had already made his original travel arrangements.

Mr. Bell: It is just a question of deferring the rearrangement until next Tuesday. I do not think that is going to hurt.

Mrs. Meslin: If he has not done so already.

Mr. Bell: I know I am not altering mine.

Mr. Philip: Can you inform Dr. Hill of that right away?

Mr. Epp: I am one of those who feel this need not be deferred again. We have already discussed it on one previous occasion and we are discussing it today. I think we are in a position to make a decision today; at least I am.

My feeling is that it is not absolutely necessary that Dr. Hill be here. We should let him go on his vacation. The important thing is that he was prepared to come here and make alternative arrangements. As far as the committee is concerned--I know as far as I am concerned--if he had said, "Look, I am not going to change my plans, so you people can climb a tree," that would have been a different thing. He did not. He is very amenable to the committee and its business.

If there is anything we need Dr. Hill for, it would be more accommodating to have a special meeting some time between now and the time he wants to leave.

Mr. Philip: Why do you not put that in a motion?

Mr. Epp: I do not think a motion is necessary. Hansard has my comments.

Mr. Shymko: I will put a motion, Mr. Chairman, since I may have been the catalyst in the original decision.

First of all, I would like to commend the Ombudsman for his decision to review his plans and for his co-operation and sensitivity in following the wishes of this committee. He is to be commended for this as well as for his position compared to other Ombudsmen. Even in the recommendation-denied cases he always felt he should be available for comments that would be requested by this committee.

In the light of the fact that the estimates will be discussed next week, I move that there is no need for the Ombudsman to alter his plans for his trip to Europe.

Mr. Chairman: You heard the motion. All in favour?

Motion agreed to.

Mr. Philip: Could someone call Dr. Hill's office right away and advise him of that motion?

COMMUNICATIONS FROM PUBLIC

Mr. Chairman: The next order of business is the report from the subcommittee on communications from the public.

Mr. Philip: We have had four communications from the public and I am going to ask Todd to summarize them one by one. Then I will give you our decision or recommendation. Shall we take the last one first? I think that is the easiest one to do.

Clerk of the Committee: The last case we did referred to Mr. N. He was complaining to the Ombudsman against a school board. He had requested that the Ministry of Education undertake a review of the circumstances surrounding his dismissal from his position as a teacher. The Ombudsman investigated the complaint and determined that the ministry had no authority, or that its authority is very limited, in requesting that the school board review the matter and invoke disciplinary charges against one of the fellow's colleagues related to his dismissal.

Mr. N was not satisfied by that complaint to the Ombudsman and the Ombudsman declared that, in the circumstances, he was not in a position to so instruct the ministry or the school board. Converse to that, the Ombudsman upheld Mr. N's claim that the ministry took an undue length of time in investigating his complaint and, pursuant to the Ombudsman's report, the Minister of Education (Mr. Conway) wrote to Mr. N and apologized for the undue length of time. In the subcommittee's opinion, that was adequate and no further action was required at this time.

Mr. N had also requested a series of documents from the Ombudsman's office relating to his file. It is my understanding that he was or will be supplied with those documents.

Mr. Philip: Our recommendation is that the clerk write on behalf of the committee, stating that the Ministry of Education was reprimanded by the Ombudsman for not acting more expeditiously on his complaint, that the specifics of the school board are not within the jurisdiction of the Office of the Ombudsman and that we recommend that no further action be taken.

Mr. Bell: Could I suggest that the committee defer its decision on this until Mrs. Meslin has returned and can confirm for us the arrangement for the documents? Having received a communication in respect of this gentleman from Ian Scott's riding office, I know there were two parts. There was his disagreement with the Ombudsman's determination of his complaint and with the request for documents.

Mrs. Meslin, we are dealing with Mr. N. I think it was the last matter the subcommittee considered. Can you confirm that there have been or will be satisfactory arrangements made with this gentlemen for certain documentation that he has been seeking?

Mrs. Meslin: Some of the documentation is from the board of education and we have no way to force release of that. We have already released the documentation we have, but it is not the documentation he wants.

Mr. Bell: All right, but just so the record is clear, your office has provided to the gentlemen all such documentation as you are able, pursuant to your act and the obligations for confidentiality that your act imposes.

Mrs. Meslin: That is correct.

Mr. Bell: Do I take it that if any additional documentation in your office's possession was given to this gentleman, that would be considered a breach of one of the duties of the act?

Mrs. Meslin: It would be, but it is fair to say there was no documentation we possessed that we did not give him.

Mr. Bell: All right.

Mr. Shymko: I have some questions. Was the issue initially and fundamentally one of Mr. N. objecting to his dismissal by the board?

Mr. Philip: He was not dismissed. He is still teaching for the board. There have been various incidents since then. He is now, I believe, objecting to some other matters.

Mr. Shymko: So the Ombudsman can get involved in some aspects of a teacher's confrontation or problems with a board?

Mr. Philip: No, the principle that we discussed was that under the present legislation the Ombudsman has no jurisdiction over boards, any more than he has over municipalities.

The principle that we also discussed, or at least that I proposed to the committee, was that the Ministry of Education should not interfere in board matters, except in instances which are grave and grievous and generally extremely serious matters to the public interest.

I am talking about something similar to the Ministry of Community and Social Services putting a children's aid society under a trusteeship, or some of the examples we have seen in that ministry, or the Ministry of Colleges and Universities moving in on Algonquin College of Applied Arts and Technology in the case of what was apparently fraudulent behaviour by certain staff members.

Generally, school boards do have elected representative to deal with all matters and, therefore, the ministry should not be involved in the day-to-day operation of schools.

Mr. Shymko: Yet the Ombudsman was involved in this case because of some tangent of the issue. Although this was a board of education over which the Ombudsman has no jurisdiction per se, there was some element that allowed him to intervene and to go through the case.

Mr. Philip: That is not true.

Mrs. Meslin: It is true, Mr. Philip.

Mr. Shymko: If I could have the answer--

Mrs. Meslin: I will clarify it for you. The way we could be involved was that Mr. N. wanted the reasons for a decision of the board of education. He wanted the ministry to get those reasons for him. He came to us because the information the ministry gave him, he felt, did not give reasons. He wanted to see those reasons and to be able to respond to them. That was one element of the complaint, and we looked into it.

He also believed that the scope of the investigation was not as broad as it should be. By legislation, the ministry had a very narrow area in which it could examine the allegations.

9:40 a.m.

Mr. Shymko: This is just one case in point where the Ombudsman's office can easily dismiss this by saying: "This is nonjurisdictional. We have no jurisdiction over boards of education. I am sorry we cannot get involved."

I know of cases I have dealt with and submitted to the Ombudsman from teachers--some of a much more serious nature than the case of Mr. N.--where the Ombudsman, because of his compassion, his personality and his approach to things, has dealt in terms of providing information and clarifying things.

I know this is a dilemma. In regard to the expansion of jurisdictions, it is why the Ombudsman is looking at boards of education as a possibility. To what degree do you decide when to get involved and when not to get involved? Is it simply because of the attitude I have seen in other cases of the Ombudsman trying to help someone else?

Mrs. Meslin: No, in this case, we did have the jurisdiction to look at the Ministry of Education's examination of the situation.

[Failure of sound system]

9:55 a.m.

Mr. Shymko: There are cases that this committee has dealt with before, which have been resolved by a decision of this committee following the recommendations of our subcommittees in the past. Do we want these cases to be reviewed again? I have strong reservations about that. I do not know if that is what--

Mr. Philip: If there is new information, the Ombudsman has the right to open the case at any time.

Mr. Hayes: It is not a case of just turning back a decision that was made before. This is a case where there is other evidence.

Mr. Shymko: If there is additional evidence, the Ombudsman's office can get involved again.

Mrs. Meslin: Have we received new evidence?

Mr. Bell: I am thinking of the wrong case. This is the matter involving a long-outstanding recommendation of the Ombudsman in this committee about amendments to the superannuation legislation which could deal with the "topping up" issue for retired superannuates who subsequently become re-employed by the provincial government.

You will recall the first waiting period was for the task force report on pension and superannuation matters. That came. Then we waited for the ministry's consideration of the items in that report (inaudible) came into force, particularly section 15.

Last September, you heard from a representative of the Civil Service Commission in regard to the two things, the Charter of Rights and certain changes in circumstances and policies in Ottawa. It has to do in a significant way with the issue of mandatory retirement at age 65 and whether the charter gives relief against that.

A couple of cases in the west have come tantalizingly close to saying the charter will abolish or defeat any mandatory retirement pension, but there has been no specific decision on the point. I understand there are two cases pending in Ontario where teachers are challenging the issue. It will ultimately go to the Supreme Court of Canada, but the prevailing legal view of those who follow the charter and apply it in practice is that the charter will work to defeat mandatory retirement policies. That is just a quick legal opinion; do not take it to the bank.

The additional factors which have unfolded in the fullness of time caused Dr. Hill to rethink his decision last fall and say that the change in circumstances had made the ministry's position adequate and appropriate. The committee adopted and accepted that position and chose not to do anything further. I believe that is all the report will say. You members considered this matter to be done with last September, subject to any further circumstances that may be brought to your attention by the Ombudsman and his office.

10 a.m.

There is another difficulty we should address, as to the gentleman, that is, even if the legislation is passed, it will not be retroactive. At least that is my understanding from people in the ministry and the commission. Probably the individual should determine what his position is now, in view of new circumstances such as the charter and the policy in Ottawa. I may have gone a little too far. For example, is it discriminatory that he has his pension limited in some way?

Mr. Philip: Are you suggesting he should make that decision before the Supreme Court of Canada decision comes down?

Mr. Bell: I do not know. It is difficult to advise a member of the public to wait upon a Supreme Court of Canada process, which might take two or three years. I am wondering out loud whether the gentleman might consider discussing this issue again with the Ombudsman's office to find out whether there are any new or additional grounds upon which to address the matter.

Mrs. Meslin: That is always open to complainants when something else arises.

Mr. Bell: That is probably the best advice we can give him at this point. In fairness to that individual, he should be informed by your office, if he has not already been, of the new circumstances and what implications, if any, they have for his position. That is about all I think you need to know and all I have to say about it.

Mr. Shymko: Mr. Hayes is raising that case on his own initiative, maybe at the request of the individual, I do not know. It may be proper to have this committee officially indicate that the committee cannot deal with this problem and the individual unless the case is presented to us through the process we have always followed, namely, that he go to the Ombudsman. If there is new material and new evidence, the Ombudsman's office will look

into that and may present it before this committee. Then we could deal with this. To jump that process would not be proper.

Mr. Philip: I think we have reached the solution. The clerk can write to the gentleman in question, say that the issue was raised by one member, send the Hansard, indicate that Mrs. Meslin had suggested it was possible, in the light of any new information and circumstances, to take a second look at it and that he might be well advised to consider going back to the Ombudsman and asking that the case be reopened. I think we have a solution to the problem.

Mr. Shymko: Except that our legal counsel, in the depth of his wisdom and his compassionate concern for cases, is on record in Hansard as providing some advice to the individual. I hope he will not interpret this as advice given by the committee through the remarks made by counsel.

Mr. Bell: To address that, I am sure it is the policy of the office that any time the Ombudsman reconsiders a recommendation he has made that has been outstanding for some time, in the light of new circumstances, and withdraws his expectation that the recommendation will be implemented and, in effect, causes the committee to do the same thing, the individual affected by the recommendation, i.e. the complainant, is owed some explanation of the whys and wherefores of these new circumstances.

I will go further and say the person is owed consideration by the Ombudsman's office about whether the new circumstances create any other grounds for considering the matter. I will go no further than that. I was thinking out loud about the application of the charter, but that is my prerogative.

Mr. Shymko: This is just loud thinking, not really advice.

Mr. Hayes: First of all, the gentleman is not from my riding. I have never met him, but he did send the material to me, knowing I was a member. I have correspondence he sent to other members who were on this committee, even at the beginning of last September.

I felt this was a case that was worth while looking into because, from what I have read, I felt that he was unjustly treated. He was given some wrong information. The committee, as you say, has dealt with that and I am pleased to find out that there is another route we can take. We can contact him and tell him to approach it again through the Ombudsman's office. I am satisfied with that at present.

Mr. Morin: I find it strange that the complainant himself did not pursue the new avenue. Had he contacted the Ombudsman, I am sure the Ombudsman would have asked him if he had any new facts or new evidence he felt should be looked at. Why use the committee as a springboard to go to the Ombudsman?

Mr. Bell: The new facts and circumstances came through the ministry. One was the charter and the other was recent

developments in Ottawa's policy formulation on the matter of pensions. They were "beyond the complainant's control" or perhaps, and probably, not within his knowledge at material times.

Mr. Philip: Before we adjourn, I have one question concerning Tuesday. Is it our understanding that we proceed in a manner similar to what we would have done if we had had estimates, namely, that Dr. Hill will make an opening statement and an opening statement will be made by each of the critics of the Ombudsman?

Mr. Shymko: By the nature of the former select committee on the Ombudsman and the present standing committee we do not have official critics of the Ombudsman, at least in our caucus. We have always approached the issue of the Ombudsman as a nonpartisan forum in the past, where there is no party policy and position. That has always been the nature of the committee.

Mr. Philip: Because it is nonpartisan does not mean that somebody in each caucus is not responsible for carrying the estimates of the Ombudsman. In a similar or an analogous way, there has to be somebody responsible in each caucus, surely, for examining allegations of government mismanagement and, therefore, responsible for the estimates of the Provincial Auditor. I am suggesting that is our case and I will have an opening statement.

Mr. Shymko: There is no official critic or person responsible for the Ombudsman in our caucus. I do not know about the Liberal caucus. No, there is not. I guess there is a different situation with the New Democratic Party. Unless this has changed, we cannot adopt that type of procedure. It is fine for Mr. Philip to start as an individual, but we cannot follow some formality of official critics at this stage.

Mr. Chairman: Any further discussion?

Mr. Shymko: Can I just ask whether the Liberal caucus have a critic?

Mr. Morin: I was under the impression that Bob Runciman was your critic.

Mr. Shymko: No, Bob was just the chairman.

Mr. Morin: I thought I overheard that he was your critic.

Mr. Shymko: Let me check, but I know there is not one.

Mr. Philip: Can you get one by Tuesday? Either that, or I am sure Reuben will do an excellent job on your behalf.

Mr. Shymko: I agree totally.

Mr. Chairman: Is there any further business to discuss?

Mr. Philip: Unless Sam Cureatz has something to add, I move adjournment.

Mr. Shymko: Before we move adjournment, is there anything that we would obtain from the Ombudsman's office prior to next week? Is there anything the chairman has in his possession?

Mr. Chairman: Todd will be sending copies of the estimates to your offices this afternoon.

Mr. Shymko: It would be preferable to have that before Tuesday.

Mr. Chairman: Any further discussion?

Mr. Shymko: On an official note, we welcome Mr. Cureatz.

Mr. Philip: Does someone who spent eight minutes in this committee get a full per diem?

Mr. Chairman: We will leave that up to the committee members.

The committee adjourned at 10:10 a.m.

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Government
Publication

STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1984-85

TUESDAY, FEBRUARY 25, 1986

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Mancini, R. (Essex South L) for Mr. Bossy

Clerk: Decker, T.

Assistant Clerk: Deller, D.

Clerk pro tem: Carrozza, F.

Staff:

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman

Meslin, E., Executive Director

Mills, A., Controller

Morrison, G., Director of Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, February 25, 1986

The committee met at 10:12 a.m. in committee room 2.

ANNUAL REPORT, OMBUDSMAN, 1984-85

Mr. Chairman: Since we have members from all parties present, I will call the meeting to order.

Mr. Philip would like to discuss an issue with the committee.

Mr. Philip: Mr. Chairman, after speaking to you, I realize this is the appropriate way to do it. Normally, estimates have an official Hansard record printed. I recognize this is not an official set of estimates; the estimates for the Ombudsman this year have been passed. However, the proceedings of this committee simply get an Instant Hansard, the exception being the estimates of the Ombudsman.

Mr. Chairman: Mr. Philip moves that the chairman of the committee ask the Speaker that, for this one set of hearings, namely, the three hours this morning, we have an official Hansard.

Motion agreed to.

Mr. Chairman: We will open the estimates by calling on Dr. Hill for a statement.

Dr. Hill: I would like to make a brief statement of four or five pages regarding the estimates.

I would like to make a few comments to give you some indication of my working principles, before beginning my submission.

As you know, I took over officially as Ombudsman on March 21, 1984. I wish to point that in the annual report of the Provincial Auditor of Ontario, 1984-85, for the first time since the Ombudsman's office was organized, there was absolutely no criticism of my office in terms of fiscal mismanagement. I hope the same will be the case in the 1985-86 auditor's report.

Therefore, in planning for the 1985-86 budget year, I was mindful of the three commitments I made on taking office: (1) the need to bring a sound system of fiscal control to the Office of the Ombudsman; (2) my commitment to expand service to the public, particularly in northern Ontario; and (3) my commitment to improve staff management, morale and efficiency.

With respect to budgetary control, I have taken the position that there must be a rigid constraint policy throughout the fiscal year. To this end, I have cut back in a number of areas. For example, I have limited staff replacements where vacancies have occurred; I have severely restricted out-of-province travel;

purchases of books and periodicals have been limited; and the number of summer students, both in the regions and in Toronto, has been reduced from six to three.

I have instituted a new budget policy requiring the ongoing participation of all my directors, assistant directors and managers from the beginning of the budget planning process, based on the need to rationalize all expenditures in their areas.

I have revised and rewritten our purchasing policy to conform more closely to the Manual of Administration and introduced an entirely, absolutely new administrative procedures manual outlining all practices to be adhered to. A copy was given to your clerk for the committee's review.

Because of this new management policy, I have been able to pay the economic increases recently awarded to all Ontario civil servants to my staff, as well as their annual merit or performance increases, without any additional requests for supplementary funds from the Board of Internal Economy and this committee.

I would like to turn now to a discussion of the steps I have taken since April 1, 1985, to obtain the best value for the money spent by the office through the reallocation of our budget funds.

1. Through the installation of a Centrex III telephone system, we have achieved a saving of \$23,400 per year. This installation will enable us to become part of the Ontario government's new Metro Toronto telephone system in late 1986, which will bring a further saving of \$7,800 each year, for a total saving of \$31,200 annually. In addition, the purchase of 110 telephone sets at a total cost of \$8,239, rather than continuing to rent them at a cost of \$3,602 per year, will have recouped the initial purchase price in approximately two and a quarter years.

2. By recently subletting 1,910 square feet of our office space to the office of the public complaints commissioner, Clare Lewis, we have reduced our annual office space costs by \$28,650.

3. The leasing of an integrated in-house data and word processing system has reduced our annual expenditures by \$61,264. In addition, this equipment will reduce our dependence on external facilities, resulting in a further saving of \$18,200.

4. The relocation of our North Bay and Thunder Bay offices to more accessible, cheaper storefront offices will save us \$1,650 in annual rental costs.

5. The reorganization of our regional office structure and reduced staffing in Thunder Bay, North Bay and Ottawa from three people to two people in each office will save approximately \$45,000 in staff salaries.

6. The establishment of a more modest hotel accommodation rate list which limits overnight expenditures is expected to reduce our travel costs greatly.

10:20 a.m.

I would now like to outline what my office has already accomplished without any requests for additional funds:

1. The establishment of a district office in Kenora, including the rental of office space and the hiring of a district officer and an intake secretary;

2. The creation of the part-time field officer concept and the establishment of officers in two areas, Windsor and London, with a third to be named in Sault Ste. Marie by the end of this fiscal year or the beginning of next year;

3. The establishment of special projects officers to look into systemic problems such as (i) housing, including an investigation on my own motion of the Moosonee/Timmins Housing Authority, (ii) an in-depth study of the concerns of the developmentally handicapped and (iii) an evaluation of the psychological standards used by the Workers' Compensation Board in making awards;

4. The use of our boardrooms as meeting space by community groups, ministries and agencies, free of charge. The following groups have already utilized our facilities and are still doing so: the Canadian Opera Women's Committee, the Ministry of Community and Social Services branch in Thunder Bay, the Council on Race Relations and Policing, the Ontario Advisory Council on Multiculturalism and Citizenship, the Ontario Arts Council, the Ontario Association for the Mentally Retarded, the Ontario Heritage Foundation, the Ontario Native Council on Justice and the the Ontario native courtworker program of the Ontario Federation of Indian Friendship Centres..

My commitment to improve staff management, efficiency and morale includes:

1. The implementation of an administrative reorganization, which now includes five policy teams--workers' compensation; institutional investigations; land use, resources and revenue; justice, licensing and labour; and social benefits--and the elimination of the legal directorate;

2. The appointments of a director of investigations and a director of regional services to manage the new organization and a personnel officer who is fully acquainted with civil service practices;

3. The completion of drafting the grievance procedure so that, as I promised in my last annual report, it will become effective on April 1, 1986. The salary administration plan we instituted last year has already become effective.

All the above was accomplished without in any way increasing our staff complement. In 1984-85, our staff complement was 122; it remains at 122.

As you can see from the budget figures, I have been able to pursue my goal of increased service and constraint without requesting either additional budget funds or supplemental funding, beyond the three per cent allocated by government to cover inflation.

In closing, I wish to assure this committee that, with sound management and planning policy, I intend to continue to make every effort to do more with less and, I sincerely hope, more efficiently.

Mr. Chairman: Thank you, Dr. Hill. We will now have opening statements from representatives of the three parties. I will call first on the representative of the government party. Do you have an opening statement?

Mr. Morin: Not yet.

Mr. Chairman: Does the third party have an opening statement?

Mr. Philip: Once again, I would like to express my satisfaction with the excellent progress that has been made in the Ombudsman's office and services under the incumbent Ombudsman. The contrast with that of the previous acting Ombudsman is the difference between night and day. I appreciate he is implementing many of the reforms that members of this committee requested.

Rather than deal with your statement, I would like to use the time I have for an opening statement, as is my right as critic, to deal with one aspect of your report, namely, the systemic study you are conducting into the Ontario Housing Corp. and some of the concerns I have about the operation of Ontario Housing. I would like to compliment you for accepting the request I made in the previous set of estimates to do a systemic study of the problems facing the Ontario Housing Corp.

I was shocked when I entered into the debate on the Ministry of Housing in the standing committee on resources development. The soon-to-retire chief administrative officer of Ontario Housing still could not tell me and other members of the committee what part and how much of the report from the standing committee on justice had been implemented. I found that astonishing. I find it unacceptable. I am pleased the Ombudsman has stated he will start with the 119 recommendations the justice committee made on ways of making Ontario Housing more efficient and more humane.

I would like to cover a few of those problems and to suggest there are some major areas that need particular attention. The first of these problems is the one we discovered during our tour of northern Ontario, the abominable housing conditions in which many native people are living: people forced to live in 30-degree-below weather in tents; seniors on the third floors of wooden buildings that, on a minute's notice, could burn to the ground and cremate them inside.

There are other victims in urban areas such as Metropolitan Toronto who are similar victims of the way in which Ontario Housing is operated. Women who are the victims of violence are captives in Ontario Housing. Ontario Housing policy will not allow the transfer of a woman and her children, even though they may be in physical danger, on the grounds that the corporation will not break up a family. The poor are placed in a position with which

women of more affluent means are not faced; they have nowhere to go and the only thing they can do is to flee the OHC residence, try to find a safe hostel and then reapply for Ontario Housing.

10:30 a.m.

I would like to deal also with the arbitrary and inhumane transfer rules. It seems to me quite inappropriate that Ontario housing tenants do not have the same kind of freedom to move that tenants in other buildings have. Members know the three criteria for allowing a move. However, even within those three criteria, we find strange kinds of phenomena. The Ombudsman is aware of the case of the divorced senior who wanted to transfer to the Peel Regional Housing Authority to be closer to his family and was denied on the grounds that his wife already lived in that housing authority's area.

The Ombudsman will probably also be aware there are no transfers to co-op or other nonprofit housing on the grounds that a person in Ontario Housing is adequately housed.

The present transfer rules are based on a points system. For example, a person may have adequate medical reasons, as in the case I have been fighting for the last three or four years on behalf of a gentleman whose wife has some mental illness and speaks very little English. They would be in a much more comfortable position if they were closer to where they could shop in stores in their own language, mix with people and have doctors that speak their language in their own neighbourhood; yet they are at the bottom of a waiting list because they are considered to be adequately housed. Therefore, they have less chance of getting into a building in those neighbourhoods where they would feel comfortable and where the wife's mental health would be much improved, simply because they are already living in subsidized housing.

That kind of arbitrary transfer policy, based on the points system, does not take into account human differences such as psychological and medical reasons for wanting transfers.

There are also differences from one municipality to another. For example, I discovered that a person who has custody of his children but not final legal custody may be accepted as an applicant for Ontario Housing in one municipality, such as Mississauga, but not in another, such as Toronto. They may be accepted in Burlington but not in Hamilton. That basically means that some children are left out in the street.

There is the whole problem of singles. Under its present rules and its present agreement with the federal government, Ontario Housing Corp. may house only a senior, a family--that is an adult with one or more children--or someone who is physically or mentally disabled. Because someone is poor, we are faced with the charade of trying to prove he or she is somehow also physically or mentally disabled in order to get him or her into Ontario Housing. I suggest it should be based on need and on people's financial position rather than on their marital status or family situation.

Another area of constant complaint is the security systems in Ontario housing. It is scandalous that, in spite of the fact we had a major scandal with charges laid and I believe a court case only a few years ago concerning security systems, the Provincial Auditor has now discovered irregularities in the tendering of Ontario Housing security systems, irregularities contrary to the Manual of Administration.

It is not just an economic problem or a Provincial Auditor's problem. It is also a problem in respect to human need. The more money is wasted through improper tendering processes for security systems, the less is left for adequate security systems and services for those in Ontario Housing projects.

The Metro Toronto Housing Authority and some of the others have recently rationalized or regionalized their administrations. I hope centralized would perhaps be a better word. I hope in his investigation the Ombudsman will look at the effect of that on tenants and on the already frequently heard complaints that tenants feel very remote from the administration of Ontario Housing.

I was the chairman of the standing committee on administration of justice that conducted the inquiry. Over and over again, we ran into considerable differences in the way in which tenants were consulted or not consulted from one housing authority to another. They are all under the Ontario Housing Corp.; yet we found tremendous differences.

In some municipalities, tenants were consulted. They had representatives on the housing authority board. In those instances, we found a lot less anxiety and far fewer problems than in other housing authorities where they were treated as people you manipulate and do things to rather than with. I hope those differences will be looked at and that some of the better models might be encouraged in all housing authorities.

In our inquiry, we discussed the need to have each project individually budgeted so that we could examine in an open way the budget priorities of the manager and have some public input. It is not that the tenants are going to set the budget, because that is the government's responsibility, but there should at least be some public input into it. That way, tenants can see how much vandalism costs and have input about whether the playground will be repaired this year or whether money will be put into the day care centre. That is the kind of thing that could be done fairly simply on a project-by-project basis; yet it is not being done, in spite of the recommendations of the justice committee.

Consulting the tenants means not only a more humane system of housing but also savings to taxpayers. Tenants who are consulted feel as though they are part of the community and are therefore working with management to ensure that the project runs efficiently and humanely.

The last area I would like to talk about is one that is of great concern to me and to my constituents who live in Ontario

Housing, the gradual deterioration of the maintenance in these housing projects. I suggest part of that is related to the lack of consultation with the tenants. However, part of it also has to be related to the architecture and the way in which many of these projects are designed. British research has indicated that common faults in design and layouts contribute directly and significantly to the inadequate, deteriorating conditions on planned housing estates.

A range of measures that concretely addresses these faults and rehabilitates existing Ontario Housing buildings can be designed. The research in Britain has concluded that such corrective measures will directly reduce problems and improve the quality of life in the housing estates. I suggest the application of these conclusions are valid in Canada.

The problems of large public housing complexes or estates have been much discussed in recent years both in Canada and abroad. Deteriorating buildings, inadequate maintenance, vandalism and the pervasive dissatisfaction of tenants have been the focus of considerable social scientific research. The more deterministic arguments, such as the view that high density leads to antisocial behaviour, have been shown to be far too simplistic. From the pioneering American work of Jane Jacobs on, it has become clear that the ecological and spatial organization of housing and other features of city structure profoundly affect the quality of life.

Jacobs herself concluded that successful city neighbourhoods are "close-textured, high-density assemblages of mixed land uses, where many people live within walking distance of many destinations and there is a constant coming and going on foot along a dense network of streets...The overall result is a complex system of interlocking levels and circles of acquaintances, which gives the community a clear knowledge of acceptable mores and hence practical guidelines for behaviour--an essential framework for stability."

A problem that has received relatively little attention in this regard is the architecture of public housing: design features of buildings and the spatial organization of housing estates. This gap has been filled by recent research in Britain. A massive British research project on design disadvantage in housing was carried out by the land use research unit of the University of London under the direction of Dr. Alice Coleman.

10:40 a.m.

This study of post-war planned housing investigated the design and layout of 4,099 blocks containing 106,520 dwellings and 4,172 houses in London and Oxford, and the huge scope of this project ensured that its findings would be reliable.

Mr. Shymko: Mr. Chairman, on a point of order: With due respect to Mr. Philip, I know there are a number of questions to be addressed directly in discussing the statement that has been made by the Ombudsman. I would appreciate it if we could focus on the presentation and the introductory remarks rather than going

into an entire statement of a policy concern in one area, namely, housing, that Mr. Philip has. Our committee is not the forum for a prepared statement, which the honourable member may be using and distributing as his statement on housing.

We are here to question the Ombudsman on his operation. I am sure what the member is taking half an hour to say could be put in five minutes. We do not have official critics in this party, nor does the government party, as I indicated at our last meeting. This is why we are not making introductory remarks or cases. We do not have official critics of the Ombudsman's office per se.

Understanding that perhaps the New Democratic Party has such an individual, we have allowed for a statement, but if it is to consume another half hour, I have some reservations. I ask Mr. Philip to concentrate on the gist of a number of points that were raised in the Ombudsman's introductory statement rather than going into a housing policy statement, on which he or his party has concerns. There is no doubt I share many of these concerns. However, I do not think this is the forum for such statements, whatever the reason they are being made and may be used.

Mr. Philip: Mr. Chairman, it is not my problem that the Conservative Party is not prepared with an opening statement. They had that opportunity and were told that opening statements could be made.

It is the normal process in any estimates to have an opening statement from each of the parties. I am sorry the Conservatives were not prepared and therefore did not have an opening statement. It is not my fault the Conservative members of the committee do not do their homework.

I suggest I am perfectly in order and my role here is to put on the record, as in any set of estimates, the concern of this party on certain issues. There is a major study being conducted by the Ombudsman. The study into the operations of Ontario Housing was requested by members of the New Democratic Party, and I would like to outline some of the concerns we have on this. I am perfectly in order, and I suggest you rule accordingly.

Mr. Shymko: I want to clarify some of the statements. Accusing a party of not having an official critic is rather unfair because this used to be a select committee that operated on a nonpartisan basis all the time. We have always approached the Office of the Ombudsman from that perspective. Even though this became a standing committee, we have never seen its operation as a forum for three political, partisan approaches to the operation of that office. It has never been that way.

We have never had a party policy on the Office of the Ombudsman. We met as a select committee, as members of the Legislature, on a totally nonpartisan basis. There were no caucus policies, guidelines or directions ever given by the party with respect to the operation of this office. Because it was nonpartisan, as a caucus, we continue not to appoint critics officially and make ours a partisan role in our mandate to try to

look and to some degree provide guidance to the Office of the Ombudsman from the perspectives of members of the Legislature.

The member accuses the Progressive Conservative Party and our caucus of not having an official critic and relates it to a lack of policy, or sees being critical as a negative aspect. We do not have one, as I am sure the Liberal Party does not, because of the positive nature of that decision not to have an official critic. I want that clarification.

Mr. Philip: All parties knew they had an opportunity to make an opening statement. The Conservative Party decided not to make one, for whatever reason. I am sorry if Mr. Shymko thinks I am being partisan in making a statement that clearly outlines the concerns of my constituents and indeed of people across the province about the abominable job that the previous Conservative government did on housing. I am sorry if it is partisan to point out the Conservatives used their majority to defeat a report that was signed by both the Liberals and the New Democrats that would have reformed and improved Ontario Housing.

I am sorry if it is partisan to point out that the present government is starting to act on some of those points, but since it is and the Ombudsman is investigating, I think it is reasonable to share with him some of our concerns. Some members of the Liberal Party may share some of those concerns, because they signed the very document the Conservatives used their majority to quash in the Legislature.

Mr. Shymko: This is my final remark and I will not be making any more comments in this area. I have been a member of the select committee since my election in 1981. The difference with that select committee, now the standing committee on the Ombudsman, compared to other standing committees, and the personal enjoyment I have had, is that we sat here as nonpartisan members of the Ontario Legislature. It is unfortunate that this committee is now deteriorating to become a forum for partisan remarks and oratory.

Mr. Chairman: Is there any further discussion on this point of order?

Mr. Hayes: I suggest we let Mr. Philip proceed. I think we have wasted a lot of time. I am sure he is about ready to wrap up.

Mr. Chairman: Carry on, Mr. Philip.

Mr. Philip: The research found that the physical and social conditions of public housing tended to deteriorate in a consistent order. First, litter begins to proliferate around the estates; then graffiti appears. As these problems increase, vandalism begins to occur, the number of children placed in official care climbs and, finally, excrement becomes a problem. These problems were found to form a hierarchy of abuse of living space and antisocial behaviour, and the more serious problems only appear when the less serious abuse is established.

The researchers interpreted the pattern of behaviour through the concept of taboo: "In problem-free areas, British culture regards all of them as taboo, but when society breaks down, some taboos may be flouted more readily than others. It seems that they are breached in a set order, from the weakest to the strongest."

It then identified and catalogued a range of common design faults. For example, high-rise, multistorey buildings are associated with anonymity and limited social interaction among residents. Overhead walkways between buildings, large numbers of interconnected exits and bleak interior corridors all increase vulnerability to crime and make escape for criminals easier. Underground garages, inset entrances, blocks rising over stilts and garages all entail considerable space hidden from observation and public view.

Building grounds with unclear boundaries or in which the relation between the private space of housing and the public space of the street is confused provide unrestricted access for outsiders and further lessen the security of residents. These and other features serve to heighten feelings of anonymity, isolation and vulnerability among the tenants.

The fact is, there are certain preventive measures that can be taken. Overhead walkways should be abolished and the number of access points into an estate minimized. This reduces the ease of escape for criminals and access for outsiders. Each block should have enclosed grounds and clearly defined identity and territory. This can reduce anonymity. The number of storeys should be reduced, as should the number of dwellings per block, perhaps through vertical partitioning. The goal is to create smaller, self-contained units, which can again reduce anonymity.

10:50 a.m.

The number of dwellings served by each entrance must be reduced through construction of new staircases and entrances and by giving ground-floor flats their own entrances and semi-private gardens. The number of dwellings accessible through internal corridors should be reduced. Entrances should face the street and be visible from as many flats as possible. The streetscape around buildings should be redesigned to approximate more traditional neighbourhoods, with streets for vehicles, sidewalks, lights and waist-high walls allowing visibility, front-garden buffers with the street and houses inserted in gaps between large buildings. All this would encourage more visible, stable and varied social interaction in the street, in turn reducing isolation.

I am saying there is research which clearly shows that in Britain, by making certain design changes in public housing, you can increase the sense of wellbeing among the tenants and decrease the amount of vandalism and crime.

As part of your study, Dr. Hill, I suggest you look at the research that has been done in Britain and to a lesser extent some of the North American research, which is less conclusive and less exhaustive, to see whether some of these concepts might be applied to Ontario Housing. It would mean safer, more comfortable housing and a great increase in the quality of life for the tenants.

I am pleased you are conducting a systemic study. I look forward to receiving it when you report back to the committee.

Mr. Shymko: My remarks are those of an individual member of this standing committee, by chance a member of a political party, and it is purely from that perspective that I would like to address some of the concerns I have.

I would like to point out that I understand the nature of these estimates as being part and parcel of the mandate of our committee to monitor the operation of the Office of the Ombudsman, to assist him in some of his concerns and in some of his future projections in terms of expanding his jurisdiction and to question him on our perspective of the impact of this.

As members of this committee, with all the eloquence of partisanship, we would normally address specific concerns with policy or delivery of services of specific ministries to a minister, who sets the policy. Therefore, I will not be making any statement on policies or service delivery; I will leave that for the ministers charged with those responsibilities.

I share some of the concerns and elements that have been raised by the honourable member from the third party. However, it would have been easy for any one of us to contact our caucus research staff, who would have prepared extensive statements of policy concerns. I will leave that for another committee and the ministers, who should really respond to this.

You may have some answers to the questions and sincere concerns raised by Mr. Philip and shared by all of us. As for the degree to which we should get involved in the area of policy and delivery in questioning the Ombudsman, I would like to have some guidance from the chairman, perhaps before the end of these estimates, about whether we should have official critics of the Ombudsman's office set up by all three parties and whether we should expand or limit whatever one may describe in a casual way as partisan remarks. I would like to have some statement or guidance from you, Mr. Chairman.

Maybe our caucus, which I am sure will be meeting soon, before the House resumes, should demand the establishment of critics of the Ombudsman's office from the Progressive Conservative Party and the Liberal Party. Maybe that is the way to go; I do not know. It is a mystery to me whether that approach would be better.

From my experience in the past, that would not be the preferred route. I am convinced of that. I may be wrong, but I would like this to be shared with you. Maybe that is something we cannot decide here as a committee; that may have to be decided in caucus by our own colleagues.

Mr. Mancini: Could I have a supplementary?

Mr. Shymko: Yes, certainly.

Mr. Mancini: I understand the point raised by Mr. Shymko. I sit on the standing committee on procedural affairs and

agencies, boards and commissions and we do not have critics there. I also understand the need that a member or political party may have, from time to time, to make a policy statement.

I suggest we leave it to the individual parties to decide how they would like to proceed. I would not want to put the chairman in the position of trying to decide what the three political parties should do at a committee hearing. If there is a feeling by a person or a party that a statement should be given, if it is in order and due respect is given for time, I cannot see anything wrong with it.

At the same time, Mr. Shymko, I understand your concern about making this committee partisan, because the Ombudsman works for everybody; he does not work for any political party. I do not think we intend to appoint a critic and come in with prepared statements.

Mr. Philip: You have had one in the past.

Mr. Mancini: I do not think we intend to do it right now. Our intention was not to make a statement today, but there is no guarantee that would not change in the future.

Mr. Philip: You have the right to do it if you wish.

Mr. Mancini: That is exactly what I said. I do not want the onus to be put on the chairman or for everybody to have to run back to his caucus to decide who their critic should be. The members of the committee will judge for themselves.

Mr. Shymko: I have no objection to that route, and perhaps Mr. Mancini's suggestion is the correct one, that we should leave how we pursue it to our own caucuses. I will make an eloquent presentation in our caucus not to pursue that route. For the next estimates, we would like to know whether we want to follow this structural format of having statements from official critics with all estimates in all committees. That may well be the form.

I am sorry, Mr. Chairman, I did not want to place you in an embarrassing situation where you would have to give guidance you may not want to give in this area. I share Mr. Mancini's opinion that probably would be the forum where the decision would have to be made.

Dr. Hill, you no doubt have made a great many changes and improvements, progressive in many ways. I hesitate to say it is a comparison of night and day, because I am sure the challenges that faced the late Arthur Maloney, who was setting up the offices, were tremendous in beginning from scratch.

I am sure you will agree a great deal had been set up by the former ombudsmen who shared your responsibilities and dilemmas and who, being fallible human beings, made mistakes. A lot had been done in the past, from the inception of the office, and you have taken the wisdom of the staff and their advice in terms of what happened in past years and improved upon it. I see an improvement and I congratulate you, sir, for that.

I would be careful not to give the impression it is a situation of night and day because there were a great many progressive accomplishments by past ombudsmen and the staff, many of whom were there from the beginning of the operation and may still be with the Ombudsman's office.

11 a.m.

Mr. Philip: Mr. Chairman, on a point of order: When I used the analogy "night and day," I was clearly referring to the difference between Mr. McArdle and Dr. Hill. You know that as well as I do, Mr. Shymko, so please stop distorting my thoughts. That would add a certain element of partisanship into this committee that I am sure you would not want.

Mr. Shymko: I am totally agreed, and if I have misunderstood the remark "night and day" as not being what you have explained, I certainly had no intention of being partisan.

I want to ask the Ombudsman a few questions. The Manual of Administration seems to be what you will be following now with respect to the purchasing policy. Since you have indicated that, as of April, you will be establishing a policy on grievance procedures, I want to ask whether such grievance procedures, or some of the aspects related to them, have some relationship to the Manual of Administration.

I am not familiar with the manual and whether it provides any guidance for you. As well, I am sure you have consulted the staff about how to set up that relationship. Is the Manual of Administration in any way shedding any light on grievances?

Dr. Hill: We have used the civil service grievance procedure as a model for which to bring in our own grievance procedure. Basically, we are adopting 99 per cent of it. The civil service grievance procedure will be the procedure of the Ombudsman's office and the Manual of Administration is being followed. I have instructed the staff to follow it, and that is for the first time in the office of the Ombudsman.

Mr. Shymko: I asked because, from the criticism the committee has had in the past, we kept referring to the Manual of Administration as the Bible, so to speak, for such decisions.

In looking at the savings--the fiscal relocations of moneys that you have listed from points 1 to 6--I would like to ask about the reorganization of the regional office structures, particularly those serving northern Ontario. My understanding is that each office, in Thunder Bay, North Bay and Ottawa, had three staff and you have cut that to two each; in other words, from nine to six. Is my understanding correct?

Dr. Hill: That is right.

Mr. Shymko: We had an impression that there was a need to expand services in the north and I understood the office in Kenora was part of that. I also understood your field officers at Sault Ste. Marie, if one may describe that as being the north, would be part of this.

Normally, when you see expansion of services, you think of an increase in staff or at least maintaining the same staff. When you say you have reduced the staff from nine to six in those three offices, I wonder what you really have done. You have also expanded with Kenora and field offices. In the whole complex of northern Ontario, do you see a reduction? Do you see maintaining the same numbers or do you see an increase?

Dr. Hill: Two of us can answer that. I will start, and then I will call on Mrs. Meslin.

We want to expand the geographical coverage, and we basically feel that in the offices we had, we did not need as many staff; they can do the job with fewer staff. We want to use more geographic representation, which we did not have before. We want to move out, while tightening up the kind of service done within the office itself.

Mr. Shymko: So you do not see a reduction for northern Ontario; at least, I would hope there would not be any in the totality. If you take Kenora and Sault Ste. Marie, you have a redistribution or reallocation of people rather than cuts.

Dr. Hill: Yes, and more places being covered in the end.

Mr. Shymko: Would this impact on the moneys from the budget allocated to servicing northern Ontario as well? In the global aspect, you do not see a diminution of moneys there.

Dr. Hill: No, I do not, because we are going to be adding other people. There will not be a diminution. There will be more money in the north, but we are robbing Peter to pay Paul. That is exactly what we are doing.

Mr. Shymko: As a humble member of the Ontario Legislature, with no capacity to represent caucus policy, I think I can say it is shared by all of our members that we would like to see even fiscal expansion to the north with respect to budget allocations because of the importance and priority you have attached to that area.

Dr. Hill: The budget allocation for the north and for regional services will be much higher than it has been under previous administrations.

Mr. Shymko: The other area is related to what Mr. Philip was concerned about. Housing is a very important area, the Ontario Housing Corp. being part and parcel of the complexity of what we term housing, be it rental or owned, and the whole question of the fundamental human right to decent shelter, be it on the reserves or for the destitute in such urban centres as Metropolitan Toronto. It is a political issue you cannot perhaps address or respond to with respect to policy. The Minister of Housing (Mr. Curling) would probably have the answers.

However, I share some of the concerns Mr. Philip expressed, namely the Ontario housing situation. In the delivery of your mandate, can you dwell on policy areas and make suggestions such

as, "It is my view as the Ombudsman that a 24-hour security system should be installed in all Ontario and Metro housing complexes," because of something you have seen through your office in terms of complaints or even tragic situations? In my constituency we had people who died in a fire. Had there been a security system, these tragedies would not have occurred. I have petitions, which I am sure Mr. Philip has received as well, demanding that there be 24-hour emergency systems installed.

The other area of concern with Ontario housing is that so much power is given to the local manager and superintendent of a building. There are a lot of insinuations of corruption and so on. Perhaps a board of advisers made up of elected residents could be set up so that some of these complaints would be channelled and advice would be given on the operation of the buildings, as with co-ops, condominiums and other housing complexes. There is a need for that and I wonder whether you as the Ombudsman are prepared to make such suggestions, which may verge very delicately on the area of policy. If you feel you are comfortable in making such recommendations, then we will be comfortable in expressing concerns in the policy area and in complaining to you. I am asking you for some guidance.

Dr. Hill: Perhaps I can give you some guidance that would be helpful by way of an example. We have received a fair number of complaints in respect to housing in the Moosonee area and in respect to the Timmins Housing Authority. We saw a distressing pattern emerging. Instead of summarily making a point or a recommendation or getting into the area, I sat down with the minister and said: "Can we work together so that I can do an investigation of this whole matter of my own volition? Can we work together with the Timmins Housing Authority to look at this matter?"

The minister was most pleased indeed to sit down and say, "My top officials will be pleased to work with your top officials; we would welcome a report of your own volition in this particular area," dealing with a variety of questions and problems of the kind that Mr. Shynko has mentioned.

11:10 a.m.

However, that was not done, because I do not think an investigation can be done unilaterally on the will of the Ombudsman. The investigation should be done with the co-operation of the ministry officials and the minister himself. Therefore, we sat down at two meetings, and I got the co-operation of the minister and his top staff to agree to that kind of investigation. In that climate I can go in and make a variety of suggestions all along the line, giving progress reports to the minister about what I am doing, getting his assistance and then tabling a report in which there are no surprises and in which I hope there is consensus.

That is what we are trying to do. I hope that answers your question in the sense that this is the way we will get into these other areas that you and Mr. Philip raised, in which I could make recommendations. Yes, I can get into policy areas. If I see a

situation in which a variety of complaints are coming to me and a systemic problem is taking place, it is the Ombudsman's duty to investigate, working with the government and the authorities.

Mr. Shymko: I am sure that some of the reality and the deficiencies you see in the specific investigation of the Timmins Housing Authority will overlap and that you will see the same thing with the Metropolitan Toronto Housing Authority and housing authorities in other centres in the province. You have established special project officers in three areas who work in conjunction with the ministry staff. That is similar to what the public complaints commissioner does with police departments and so on. I can see that similar relationship.

Are you planning to establish special project officers in other areas beyond the three mentioned? If one were to list the concerns, at least a dozen areas, if not more, would warrant special focus and co-operation with the ministry to rectify problems.

Dr. Hill: We have set these as priority areas. While some people might think our staff is large, it cannot handle all these things at once. We have to set a priority. I have looked at the areas of Moosonee, the physically handicapped and people with psychiatric problems as priority areas that we can handle internally this year without additional cost, perhaps by bootlegging resources of other ministries to help us.

We can then go on in other years to establish the other priorities for other investigations, if needed. I have to have a cutoff line somewhere, and we are handling as much as we can handle right now. Again, this is the bottom line without asking for any more money.

Mr. Shymko: You must be a miracle worker if you are moving in the direction of special project officers. Once you open the door to special focusing, I see a crying need to expand, to triple, to quadruple the number of these special project officers. If you can do this without more funding, you are a miracle worker.

Dr. Hill: I cannot do it for ever, but I am starting on that premise now because of certain major changes, certain cutbacks I have made, in the administration of my office. I am doing it. Perhaps next year it will be a different story. If I continue with this, I may have to ask for more help. Right now we are doing it within our budget constraints.

Mr. Shymko: You are taking a direction that has never been taken by any Ombudsman in the past. They have had their policy areas. You mentioned five policy teams. For example, you have a workers' compensation policy team. Does your special project officer come from that team?

Dr. Hill: That is right.

Mr. Shymko: The one on housing would come from the land resources and revenue policy team?

Dr. Hill: From within the staff.

Mr. Shymko: You are using the team personnel to do it. All right. Now I am beginning to see that.

Mrs. Meslin: I would like to supplement for informational purposes. Although the special project officers deal with a particular systemic problem, they also carry a case load. It is a somewhat diminished case load, but it is a case load.

Mr. Shymko: In other words, you are concentrating. However, you must have been doing the same thing in the past. Was there no direct focus on special areas in the past?

Dr. Hill: No. Mr. Morand can correct me, but Mr. Maloney did several things of this nature many years ago in the criminal system. I consider this a new position. I got many of my ideas for this from the Swedish Ombudsman. He felt that you should go beyond just taking a complaint. If the Ombudsman can assist the government in seeing systemic and serious problems, then he has a right to report it to the government.

Mr. Shymko: That is the way to go. I congratulate you for doing this instead of doing case-by-case studies. You are taking all these cases, focusing on them and going into the policy area. You will see policy changes. Doing this in conjunction with the ministry is a fantastic approach. I congratulate you, but I do not believe that you will not need any more money and that you will not expand.

Dr. Hill: I did not say that. Right now I do not, but later on I might.

Mr. Shymko: You will, and you will have the backing of this committee in the direction you are moving, because that is the way to do it.

Dr. Hill: Thank you.

Mr. Shymko: I will not dwell on the housing authority; I just mentioned some areas. I could speak at length just on housing or on the Workers' Compensation Board through the cases in which I have dealt with WCB. If I asked a researcher, we could be here for three hours talking only on these concerns.

One of the problems I see with the physically and developmentally handicapped and housing is that a policy is in place to provide them with assistance for housing and shelter only if the housing is rented. Once the physically or developmentally handicapped individual wants to own his shelter, there is absolutely no assistance whatsoever.

I see this as discriminatory. For example, in my riding there is a developmentally handicapped individual living with a physically handicapped individual who has multiple sclerosis and is in a wheelchair. The two of them purchased a home because they feel that security for them is owning their shelter rather than renting it.

I have pleaded with the ministry to set up the option that we as healthy individuals have of buying, renting, co-op or whatever. The handicapped do not have that option with this assistance policy. When you focus on the concerns of the developmentally handicapped and other handicapped people, could you take a look at housing? There is a fundamental discrimination in the options that these people, destitute as they are, are given.

The last one concerns the Workers' Compensation Board. We all share the recommendations from this committee. The whole meat chart approach is still in place. Our concern is that the evidence from a family physician and from doctors outside the board is not being given the weight it deserves. It is in the books that the changes that have been implemented must give that weight, but as I personally come before these various appeals, I see that it is still very difficult to give that equal weight. I do not know how you will resolve it. Some clout is necessary to start pushing the board to practise what it is now supposedly preaching.

Dr. Hill: Mr. Shymko, you will be pleased to know that I have had a number of meetings with Dr. Robert Elgie. I have been very frank. I see some compassion and great interest and I believe this will change.

Mr. Shymko: Very good. I have more questions, but I will allow other members to question the Ombudsman. Thank you, Mr. Chairman.

11:20 a.m.

Mr. Mancini: I want to direct my questions to the fiscal operations of your office and not so much to the policy operations. I was not here for your opening statement, but I have taken a few minutes to read it. Frankly, I am surprised by the strong words you use. For example, on page 1 you state emphatically that there is, "the need to bring a sound system of fiscal control to the Office of the Ombudsman."

I have never sat on the standing committee on the Ombudsman, but I have had conversations with my colleagues and have read press reports in which the stories of extravagant expenditure in the Ombudsman's office were legion. I am very glad to see that you have the courage not only to say that there were some problems with fiscal control at the office but also to say that you are making it a priority and a reality that fiscal control will be part and parcel of the operation of the Ombudsman's office and of your responsibility.

That is very important when, as we all know, government has so many demands on its tax revenue. It is very important that both the public and the members of the Legislature have confidence in the fiscal operations of an office as important as yours. In bringing in this new fiscal control, did you seek outside help?

Dr. Hill: To start with I sought the services of plain common sense. In terms of fiscal control I had the services of my executive director and my controller, who recommended a variety of measures to counteract the constant criticism the Provincial

Auditor had levelled against the office for 10 years. Those criticisms made by the auditor had piled up during the past 10 years, and I looked at each one of them. I sat down with my staff and said, "We are going to bring it under control." I did not need outside help for that.

I did get some outside help in salary administration and in reorganizing the office; I needed some outside help. In terms of taking certain measures to counteract the auditor's criticisms, I included it in the office.

Mr. Mancini: Whom did you use for the reorganization?

Dr. Hill: For the reorganization I used an outside party named E. Marshall Pollock. He is a former Assistant Deputy Attorney General and a person who worked very closely with me in matters of this nature and in other matters when I was the chairman of the Ontario Human Rights Commission. He was a person who knew management and administrative work. He sat down with Mrs. Meslin, me and others of the senior staff to help us redesign the administrative structure. He was a former civil servant who had served the government quite well.

Mr. Mancini: Was he retired from the civil service at the time?

Dr. Hill: Yes, he was.

Mr. Mancini: Was he recommended to you by the government?

Dr. Hill: No. I knew him. I knew his ability and his background. I checked him out with other people who were in the Attorney General's office--I had lost touch with him for a couple of years--and found that he was doing good work. He used to be the manager of the Ontario Lottery Corp. for Wintario. I used him on my own recommendation and because of his service to the public service for more than 20 years.

We also tendered for that position and he brought in the lowest tender.

Mr. Mancini: Do you recall what the tender was?

Dr. Hill: Do you know what the tender was?

Mrs. Meslin: No.

Mr. Mills: We can get it for you.

Mr. Mancini: Was he with you for a sustained period?

Dr. Hill: About one year--until the job was done.

Mr. Mancini: Please correct me if I am wrong, but some concern was expressed previously about vehicles bought or leased by the Office of the Ombudsman. I flipped through this large number of sheets, which I found to be quite helpful in explaining the cost and the operations of this office. What is the present status of and policy regarding vehicles at the office?

Dr. Hill: I know it generally, but my controller can tell you definitively what we have done and what cost-saving measures we will be taking in this respect. Do you want to spell that out?

Mr. Mills: We have purchased the three vehicles we use at present. The last lease expired at the end of October, and we took delivery of a car that we purchased from the Ministry of Transportation and Communications in November. We now own everything, as we find owning to be more cost-effective.

Mr. Mancini: You have three vehicles for the office. Who is allowed to use the vehicles? Is there a policy for that?

Mr. Mills: Yes. There is a written policy in the administrative procedures manual. It requires the assistant director to authorize the use of a vehicle for an investigation. That requisition comes to me for countersigning before the employee gets the log book and the keys.

Mr. Sheppard: On a point of order: What kind of cars are these? Are they small cars, medium-sized or what?

Mr. Mills: Two of them are Phoenixes and one is a K car. They are compact cars.

Mr. Philip: What colours are they?

Dr. Hill: They do not have air conditioning; they are very standard cars.

Mr. Sheppard: Do they have a radio?

Mr. Mills: They have AM radios.

Mr. Mancini: I was interested in your total staff number of 122 and how you juggled staffing positions to give more service to areas outside Toronto. I noted your eagerness to serve the north more. That is very commendable. How does a staff of 122 compare with other ombudsmen's offices in jurisdictions of a similar size to our province?

Dr. Hill: The very simple answer is that it is larger than that of any other province because Ontario is larger. I cannot tell you how it compares with those of Sweden, Germany or European countries, but it is a large staff.

I will try to answer that more completely. I had two options when I took over as Ombudsman. One was to dismantle the staff by cutting it down to three quarters. I do not know if that was the will of the Legislature because it approved the size of the staff originally.

The other option, which I thought more sensible, was to hold the line where it was and to use the staff I had to extend the service to cover more areas of the province and to give more generally distinct coverage. I took the latter option.

The size of the staff is larger than some of the others. However, it has to be thought of in terms of the size of Canada. We have a huge area to cover. We also have some exceedingly complex cases that require a lot of staff and a lot of lead time. The answer is that it is larger, but it is not growing.

Mr. Mancini: I had some personal thoughts and reservations as to the size of the office, not under your administration but under past administrations. When you projected the figures into the future, if the size of the staff had kept growing at the same scale it was, the Office of the Ombudsman would have been larger than most ministries.

11:30 a.m.

Mrs. Meslin: Perhaps I can help to enlighten you about this a little bit. When we talk about the staff and what we have done, in a number of instances, comparatively speaking, we are doing things that are not done in any other province, including the concept of field officers and what we have done to try to monitor cases through the data processing system. At one point, this work was all done outside; it was not done in the office. The system was rented from the University of Toronto at enormous expense.

We have changed our staff functions somewhat so we now have in-house facilities to do those things. We have done a number of things to juggle what staff we have. As I mentioned earlier to Mr. Shymko, we now have investigators who are also doing special projects. We are utilizing those people in very different ways.

We have two people in regional offices where we used to have three because we redefined the secretarial job and expanded it to an intake job where the staff has been and is being trained to greet people and take their complaints. This allows us to expand the job of the other person to do more investigations and community outreach work.

Mr. Shymko: Is that what you mean when you say positions have been transferred from code 890? I could never understand what "transferred from code 890" meant in staffing.

Mrs. Meslin: I do not know what that means.

Mr. Shymko: On page 47 of the estimates' material, you list manpower data. Under the actual number of regular staff, there is 18 as of December 1984 and the proposed number is 31. It indicates that 14 regular staff positions were transferred from code 890. What does that mean?

Mrs. Meslin: Mr. Mills, do you know what code 890 means?

Mr. Mills: These are numerical representations of entities within the office. In this case, the word processing staff was being transferred under my jurisdiction. It is an internal shuffle.

Mr. Shymko: It is not an additional 14 people hired at that stage?

Mr. Mills: No. The better representation for your purposes is on page 21. As of December 31, 1984, we had 118 regular and four unclassified staff. Looking at 1984-85, we projected 114 regular and eight unclassified or contract staff.

Mr. Shymko: The code is a shuffling of staff from purely administrative input.

Mr. Morin: Will the field representatives continue to do investigations in the north or will the responsibilities be left with the investigators in Toronto?

Dr. Hill: Our move now--and we have started that move--is to have, not the part-time field contract people, but the officers in the north not only start investigations but also conduct them. This is contrary to the past. Mrs. Meslin can tell you more about it.

We understand that people in the north want their own investigators. We acknowledge that and we are now starting to train and use--and will be using in the future--investigators all through the process in the north.

Mr. Morin: I must congratulate you on that. That is the answer I wanted to hear.

Dr. Hill: You have commented on it a number of times and we are beginning to do just that.

Mr. Morin: I am extremely pleased to hear that. You mentioned you have a number of people in the north. Previously, you had 10 people there. With the addition of Sault Ste. Marie, you also have 10 people. It is two people in each location. It is the same number of people. You are not increasing the number of people.

Dr. Hill: No. It is just the distribution.

Mr. Morin: Will the emphasis be put on dealing with complaints or will it be strictly educational?

Dr. Hill: The whole function and the existence of the Ombudsman is to handle complaints at the initial stage. On the other hand, the educational component is also very important.

We will continue to put the priority on obtaining and handling the initial complaint. We will use that as an initial base. I hope a person will also spend at least half of his time doing public education work regarding the office. However, complaints are still the backbone of the office.

Mr. Morin: By "public education," do you mean educating the public on what the Ombudsman is all about, over and above the publicity you plan to do through the different media?

Dr. Hill: That will be done along with public education meetings, seminars and conferences, distribution of our leaflets and whatever and with public speaking. The use of the

publications, displays and exhibits, which we just recently got, will be combined with our speaking and conferencing programs.

Mr. Morin: Again, the educational program is strictly to inform the people about what the Ombudsman can do for them.

Dr. Hill: That is right. It is to let people know. The complainants come to our office and ask over and over again: "What is an Ombudsman? We have never heard of it." The term was not even known. People cannot exercise their rights unless they know what they are.

I thought I would use the same strategy I used when I chaired the Ontario Human Rights Commission; that is, to develop a good, solid educational program to answer questions without propagandizing. What exists? What does the legislation mean? How can you complain? How can you get your rights taken care of? That is what public education means to me. I am not talking about a program to propagandize the office. It is strictly to let people know what exists and how they can get to it.

Mr. Mancini: You have a staff of 122. You have 10 in the north. Is that correct?

Dr. Hill: Yes. My executive director can answer--

Mr. Mancini: Okay, 10 in the north, one in Windsor and one in London. Where else?

Mrs. Meslin: Windsor and London have those part-time field officers.

Mr. Mancini: What exactly is a part-time field officer? Is it 20 hours a week? Is that what you are telling us?

Mrs. Meslin: Yes, approximately three days a week.

Mr. Mancini: They rent office space?

Mrs. Meslin: There is no office space. This is Dr. Hill's new concept of what he calls field officers. He is attempting to expand service to as many locales in Ontario as he can without a whole office entourage. It is comparable to a stringer on a newspaper. A person from the area who knows the area works for us three days a week from his home to service complaints and to make people aware of us.

Mr. Mancini: A call comes in to Toronto from Windsor or London. The call goes to the London or the Windsor field officer. The information is relayed and then the officer is supposed to do whatever--

Mrs. Meslin: We do it the most efficient way. For instance, if the Windsor field officer meets with a group and gets a complaint, he does all the preliminary things and sends it on to Toronto.

Mr. Mancini: How many calls per week do you expect to send to these field officers?

Mrs. Meslin: This is a brand-new service.

Dr. Hill: It just started.

Mrs. Meslin: We have just hired people. It is so experimental that we will have to figure out the best method as we go along.

Mr. Mancini: Of the 122 then, we have 10 in the north, two part-time in London and Windsor and everybody else in Toronto?

Mrs. Meslin: Yes.

Dr. Hill: Two in Ottawa.

Mr. Mancini: That is 12 full-time and two part-time outside Toronto. Do you not feel that is unfair in some way?

Dr. Hill: The Toronto people serve the metropolitan region--Hamilton and all the way around a considerable region of three million people. As we see the need, we will continue to further redistribute the staff as we can.

Mrs. Meslin: Our investigative staff also travels all over the province to wherever there is an investigation that has been brought directly into Toronto and deals with an area that is not covered. Our investigators are out. That is why we have the cars or whatever transportation.

For instance, those people on our institutional team, which handles correctional facilities and psychiatric facilities, have a roster of places they visit all the time. At least five or six of them are always on the road, going to correctional institutions every single day.

Dr. Hill: And hospitals.

11:40 a.m.

Ms. Morrison: Could I clarify one thing? A lot of our other investigations have to take place in Toronto because that is where the government offices are located. There are some good reasons for having a large complement in Toronto. Just because the complaint comes from Sault Ste. Marie does not mean the files will necessarily be there. A lot of the work actually has to be done in the government offices in Toronto.

Mr. Mancini: I understand that. There is a lot of logic to that. Still, it appears that 95 per cent of your complement is here, which is a lot.

I wanted to ask the Ombudsman, because I want to deal with the financial arrangements at the office--this year's budget is \$6,052,000? Is that correct?

Dr. Hill: Yes.

Mr. Mancini: Do you have projections for the future?

Mr. Mills: At this point, we are just working on our estimates, so we have not yet derived a total. However, we have been asked, to use the vernacular, to straight line it. As we work along through our estimates, we may determine that some of these changes to which Dr. Hill and Mrs. Meslin alluded, will cause us to view the stringers as a separate program, in which case we will flag that and identify it separately.

To try to get back to your question, we have swallowed these economic increases out of our existing estimates. Therefore, we may be asking for money to cover those in the next year, since they become part of this year's base. At this point, I simply cannot give you a straight answer on whether it is the same or a little more.

Mr. Mancini: I have one final question dealing with your staff. I noted from looking through some of the information here that it appears you are encouraging part-time work at the Toronto office. Do you have part-time work or work sharing? Do you encourage that in your office? What type of work-sharing program do you have?

Mrs. Meslin: It is not work sharing per se. Recently, our experience has been that a number of our investigators and other staff who have come back from maternity leave have asked whether it was possible for them to work on a part-time basis. We have given that every consideration.

Mr. Mancini: You have allowed that. Who does the remaining work? Have you allowed two people to share one job?

Mrs. Meslin: That is right.

Mr. Mancini: Congratulations. Thank you.

Mr. Baetz: I have two questions, both strictly nonpartisan. The first one deals with the matter of systemic examination and so on. I do not think anybody here would disagree with the fact that you should become involved in some systemic studies. We all agree, however, that unless there are pretty clear parameters as to what is meant by "systemic examination," you could very quickly get into enormous budgetary implications.

I would like to deal specifically with the subject of housing. You have already given my colleague Mr. Shymko some answers on that.

In your examination of the whole system of housing here, I thought you would have been more concerned about such questions as accessibility, equity, fairness and the rental structures and subsidies. One can go on with the kind of problems one could run into in that general area.

To what extent can you get into some of the more technical areas that Mr. Philip mentioned? I am not saying for one minute that those are not very important questions; they are. However, when you get into the whole question of street layouts and patios and architectural defects that can create a feeling of isolation and so on, that field can become very technical.

As I say, you have partially answered it, but do you not think there may be other, better-equipped community resources that could look at that area? For example, the Social Planning Council of Metropolitan Toronto, an organization you know, has on its staff some people who have spent a lot of time on the whole question of segregation, isolation and so on. I would like to hear a little more from you on what the parameters of your systemic studies are. How do you see them?

Dr. Hill: I certainly do not believe we can take on all of Ontario Housing Corp. at this time, and all the problems that have been mentioned to us in letters I have received. Those are there. I have to make a judgement call based on the most critical area and the number of staff I can use to investigate that.

As I told Mr. Shymko, I looked over the situation. I read many letters, statements, organizational representations made to me and representations made to me by members and drew the conclusion the most important one, one I could handle and perhaps make some impact on and bring a sensitivity to the whole picture, was the Moosonee situation. In my view, it was the most critical because people were living in tents. I do not know of anyone living in tents or cloth lean-tos in Toronto.

With that backdrop, with the people affected and the respiratory ailments and the things facing the native people in particular in the Moosonee area, I could handle that and I considered it a priority area, something that concerned me deeply. I took that as a corner and with that I sat down to develop the parameters with the ministry. I am sitting down with them now to find out what things I should be looking at in this investigation on my own motion.

That is the only answer I can give you right now. I carved out that area as one where I felt Ontario residents were most severely restricted and harmed, and where I thought the Ombudsman could do some immediate good without taking on a 10-year study of all Ontario housing. It is something I want to do and get over within a matter of months and make an impact.

One of the ramifications to that investigation on my own motion may be a spillover effect on other areas of Ontario housing which I would also look at, but I cannot take them all on with the resources I have at this time.

Mr. Philip: Would you agree, though, there are certain processes now in place in Ontario housing, processes that were commented on in the report of the standing committee on administration of justice, that could be changed? That would have a dramatic impact on the way in which Ontario housing is managed and would correct some of the inconsistencies between one housing authority that seems to be fairly humanely managed and another which, at the other extreme, seems to manipulate and do things to people.

11:50 a.m.

Would you not further agree that certain things, such as the

architectural concerns I mentioned, could at least be recommended in your report as a major study area? There are other countries that are doing things on this. The Ministry of Housing could contract to an independent organization, such as the Social Planning Council of Metropolitan Toronto or any of the social planning councils, to undertake an investigation, or a university could undertake such an investigation. Once you have that report, you could comment on it.

Dr. Hill: An intelligent report in the area I am doing right now, I say again, would have a spillover effect. I would be making comments beyond it and on how other things could best be done without having to go into a complete study of those areas.

Mr. Philip: Mr. Baetz makes a good point. Nobody is suggesting the Ombudsman should necessarily do all the research himself. There may be other groups out there in a better position to do it, but you can comment on the need for the research and, after it is completed, on its practical implications to a ministry.

Mr. Chairman: The Ombudsman's office would like to know how many members will be going there for lunch on Thursday.

Dr. Hill: It is in the office.

Mr. Chairman: May I take a count?

Interjection: Is it an orientation for new members, similar to the one we had last time?

Dr. Hill: Yes. Some of you have had it already but you may want to come back.

Mr. Philip: It is a good lunch.

Mr. Chairman: What about you, Mr. Mancini?

Mr. Mancini: I will not be able to make it, I am sorry.

Mr. Chairman: It looks as though half a dozen will cover it. With the staff, there might be about eight.

Mrs. Meslin: Thank you, Mr. Chairman.

Mr. Baetz: My second question has to do with the possible expansion into other areas, such as children's aid societies and municipal governments. Mr. Chairman, I know we were on this subject the other day and perhaps you have set aside a time in our meeting to discuss this, but obviously it has enormous implications on budgeting and future budget expansion. Is this the time to ask for a comment on that or are you setting aside some other time?

Mr. Chairman: Go ahead.

Mr. Baetz: I have asked the question. Maybe Mr. Mancini had this in the back of his mind, I do not know.

Dr. Hill: I welcome the opportunity to comment very briefly on this because, unfortunately, I think I have been misunderstood by the press. As politicians, you can understand that sometimes the press reports what it wants to report and not what was said.

If you look in my annual report, not once did I say we should expand into children's aid or universities. I used them as illustrative examples of what should be looked at by the legislators. That is a legislator's prerogative, I am fully aware of that.

However, I felt that after 10 years, it was time to look at it and re-examine it. In 10 years, there have been no legislative changes, there has not been a single amendment, no action has been taken. In 10 years, we have had an abundance of letters, people writing in and complaining about this, that and everything else: "Why do you not cover municipalities? Manitoba does. Nova Scotia and Quebec do. Why do you not cover them?" All I was really trying to do was bring that to your attention and encourage debate and discussion on the subject by the standing committee on the Ombudsman and the Legislature.

The other day someone suggested it would be helpful to give a position paper to this committee. I am fully prepared and am starting now to develop a position paper on areas you might consider. These are for consideration. I am sorry the press took it as what I wanted because that is not what I said.

After working with government in Ontario for more than 20 years, I think I know the appropriate things to say and the appropriate role of the legislator as opposed to the paid servant. I thought that confusion was made and it was a bit unfair to me. It is not the standing committee that is unfair; the press jumped on me, and that is what happened.

Mr. Baetz: Yes, we know the press.

Dr. Hill: I will have some ideas and suggestions in my position paper, but they will be suggestions.

Mr. Baetz: They will be so clearly stated that even the press cannot misinterpret.

Mr. McLean: Dr Hill, you indicated in your remarks: "The leasing of an integrated in-house data and word processing system has reduced our annual expenditures by \$61,000 plus. In addition, this equipment will reduce our dependence on external facilities, resulting in a further saving of \$18,000." Did you put in a new system? What is the monthly rent or what is the cost?

Dr. Hill: Could I refer this to my controller?

Mr. Baetz: Certainly.

Mr. Mills: We had been renting word processing equipment from Wang. It was a monthly rental and was costing us well over \$100,000 a year. We decided we had better get equipment to help us

do the work we wanted to do in-house, since confidentiality is a concern. We leased other Wang equipment for five years. That is how the cost reduction comes through; we can do more with less.

Mr. Baetz: Are you still just leasing but on a better system?

Mr. Mills: Yes, and leasing is generally cheaper than renting.

Mr. Shymko: Could I have a supplementary on that, since it is related to supplies and equipment in the estimates? There is an almost 11 per cent decrease in services and an almost 32 per cent increase in supplies and equipment. I understand the controller's office spends about \$41,000 in supplies and equipment as the allocation in the estimates. Next would be communications and public education. Those are the two big areas of this spending on equipment and supplies.

Can you tell me where the 32 per cent increase really went? Do I gather it would be in the two areas I mentioned? Where was the cut in services? In my view as a layman, I would see services as a much more important area than supplies and equipment. I would rather see a cut in supplies and equipment and an increase in services. I may be wrong. Where have the services been cut? Is it in the area of legal services or the controller's office?

Mr. Mills: If you will turn to your copy, starting on page 6 you will see the items of reduction. For example, at the bottom of page 6, we start with reduction in advertising expense. Then, as I indicated to Mr. Mancini, there is reduction in vehicle leasing expense.

Mr. Shymko: The services reduction is in advertising and leasing. Since you are giving such weight to communications and public education, is the cut from the area of advertising?

Mr. Mills: No. This flows directly from the decision not to hold public hearings. There was quite a bit of advance publicity in respect of those.

Mr. Shymko: Therefore, it is public hearings rather than the other area of pamphlets and so on.

Mrs. Meslin: We issued new ones.

Mr. McLean: I have one further question. You estimate the decreased cost for security. Could you tell us something about this criterion? Have you reduced the staff? What have you changed?

Dr. Hill: We did a study. Go ahead, Mr. Mills.

Mr. Mills: We had and still have in our employ a Mr. Harrington who is very skilled in dealing with complainants who are upset when they come to us.

Dr. Hill: He is a former Argo.

Mr. Mills: We decided we could lean less heavily on outside protection services. We need someone to open the building in the morning and lock it in the evening, so he works six hours per day as distinct from working about 12; hence the reduction. That is a purchased service.

Dr. Hill: It was such a high rate in the past because someone came in after Mr. Morand with a shotgun, so they decided to increase security. No one has come in with a shotgun after me yet, but that is in due course; so that is the decreased security.

Mr. Sheppard: Is the security armed?

12 noon

Dr. Hill: No.

Mr. Sheppard: It is really your own now instead of hiring a security firm, which is a good move.

Mr. Mancini: Why would the Ontario government protection employees not be used?

Mr. Mills: My understanding is that would cost us money too. I do not think it is a free service.

Mr. Philip: One area I want to ask you about is the problem of overcrowding at the Metropolitan Toronto West Detention Centre. It is an issue that has come up from time to time. As you know, the west end detention centre houses both those who offend least and the worst offenders. It is a holding tank for people who have been convicted of some very serious crimes, such as rapes, murders and various other crimes, pending court hearings or transferral to maximum security federal penitentiaries. At the same time, people who are picked up for petty shoplifting can find themselves in the cell next to them.

There has been an increasing problem of overcrowding, and also a temporary problem--and I say temporary--of people, including the guards, getting used to having female guards in a male institution. It is something that has sorted itself out in other countries and will here; none the less it is another variable with which they are having to cope at the moment. They appear to be coping with it well, but it is an added tension coming on top of the overcrowding problem. Have you had very many complaints about the overcrowding at the west end and are you planning to make any recommendations on that?

Dr. Hill: I have had not only problems, comments and criticisms about that but also about the Barrie Jail. I am having a statement drawn up and research done on that right now. I intend to make a statement on that very problem in my annual report. I intend to cover that matter. In the last four months, I have started monthly visits to all the correctional insititutions, one by one. I am trying to get to every one of them. Some of the things I see are fairly good; some of the things I see appal me. I intend to comment on those things in my annual report.

Mr. Sheppard: To follow up on a question Mr. Mancini asked about tendering the jobs, how many tenders did you get for that one?

Dr. Hill: I think I got three.

Mr. Sheppard: Of the 122 staff people, what is the percentage turnover each year?

Dr. Hill: I have to turn to my staff to help me. Could you just hold on a second? What is the turnover?

Mr. Sheppard: I do not have to have the exact figure.

Mrs. Meslin: It is probably nine per cent.

Dr. Hill: We have had a fair number leaving and we have had a very careful policy about bringing them back. Regarding the fair number leaving, I would rather not comment.

Mr. Sheppard: A nine per cent turnover is not too bad; in some places it is much higher than that.

Dr. Hill: They have left to find other homes.

Mr. Sheppard: You cannot stop people from going someplace else when they can get more money.

Dr. Hill: That is right.

Mr. Sheppard: Are the people you hire, especially those who investigate claims, young people, experienced people, ex-policemen, ex-business people or what?

Dr. Hill: I could speak to it, but I would like to have our executive director do so.

Mr. Shymko: I just wondered about the director in Ottawa. His first name is not Gilles by any chance, is it?

Mrs. Meslin: He could not take it in Ottawa.

What we have attempted to do, now that we have some vacancies in the investigatory staff, is look at a number of qualifications, first, as Dr. Hill has said many times, to reflect the new Ontario--multiracial, multicultural, etc.--in addition to which we look for people who have some experience in the policy field where we have an opening.

That can be anything from having been a police officer to a case worker from a clinic, a psychiatric worker who has worked in a clinic or a legal aid clinic. It is a broad cross-section. We are trying to reflect our new philosophy and mandate. We have made a practice of advertising for those positions right across the board in all of the ethnic newspapers, including the Star and the Sun.

Mr. Sheppard: I understand you hire a lot of different

ethnic people, but when you send an investigator out, do you try to send a black person out to interview a black person or whatever the case may be? I have heard a bit of feedback saying, "If somebody comes to investigate me, I would like him to be of the same race as I am."

Dr. Hill: The overall answer to that is no. We will send the best person out for the situation.

Mr. Sheppard: And the person that is available.

Dr. Hill: If they do not like the fact that person happens to be Asian, black, Yugoslavian or whatever, that is tough. They are going to have to accept the investigator they get. That is in line with the Human Rights Code. I am not going to send out a special person for a special race. We are going to send an intelligent, well-trained person. This happened when I was chairman of the Ontario Human Rights Commission. They said: "Do not send me a black investigator. Do not send me an Italian. I do not want to talk to him." Well, nuts to them. That is not the policy of the government.

Mrs. Meslin: Could I make one exception to that? If we send out an investigator to someone whose first language is not English, we attempt to send one who speaks that language if we have one on staff. That is my exception.

Mr. Sheppard: That was my next question.

Dr. Hill: That is a correct exception. We have the capability in 25 languages. We are not going to let a person who is Portuguese, Italian or Polish suffer trying to understand English. We are going to send someone who can speak the language. That is the exception to that, but not race or religion.

Mr. Shymko: In the office in Kenora which you are opening up, the position is still vacant according to the documents we have. Has it been filled?

Mrs. Meslin: That had been vacant last year.

Mr. Shymko: Has it been filled?

Dr. Hill: Yes.

Mr. Shymko: In such places as Kenora, for example, would you look at the criterion of someone who is familiar with northern Ontario in the area and give importance to that factor in your selection?

Dr. Hill: The best example right now would be in Timmins, where we hired a person who is a Cree but is fluent in French, because there is a large French-speaking population. He is fluent in French, English and Cree. In Kenora, the person is fluent in Oji-Cree and English, but it is not as necessary in Kenora because everyone speaks English in that area. There is not a high French-speaking population.

Mr. Sheppard: In your last report you were cutting down the time to investigate each claim. Have you got that down to less time than before?

Dr. Hill: We are getting it down. I have to be candid. I am considering this, and I have considered and will continue to consider it a major priority. I am cracking the whip in that area. I must have my investigations done more quickly but without sacrificing professional quality. On that basis, we hired a new director of investigations who is doing just that. I would like her to comment on what she is trying to do to bring that time frame down, which is a critical area. Gail Morrison is our new director of investigations. Would you like to speak to that, Ms. Morrison?

12:10 p.m.

Ms. Morrison: Yes. I think we now have better systems of following up and keeping track of how quickly investigations are going. I have five assistant directors who report to me. I get back to Mrs. Meslin about problem cases so that we can make sure there are not gaps in an investigation which need not be there. We still have a lot of gaps in time in an investigation which do not have anything to do with us, and we will never get rid of those.

We often have to wait a long time for a response from a ministry for new information on a complaint. What we are trying to do now is document that, so we can show you clearly which long durations are things we should be able to fix and which are things we are going to have to live with because they are not areas in which we can make improvements. We are now getting that information from our computer system. Next year we should be able to report to you more accurately how the durations come about.

Dr. Hill: There is another factor I have asked to have instituted, Mr. Sheppard. As you know, we have yearly evaluations of each investigator and officer. From now on, when the officer is evaluated, one of the things upon which he is going to be appraised is how quickly and expeditiously he handles cases. That will be part of his personal record.

Mr. Sheppard: Dr. Hill, I must congratulate you on that because one of my biggest complaints has been it takes too long, and all the members here are like an ombudsman in their own ridings. Nothing frustrates me more than some ministries or whatever the case may be taking three to six months to get back to me.

Mr. Shymko: How fast are you, Mr. Sheppard?

Mr. Sheppard: Faster than some of the letters I get back from them.

Dr. Hill: It is a very difficult thing. It is a valid criticism and I am still working on it.

Mr. Sheppard: I am glad you are working on it.

Mr. Chairman: Mr. Hayes, before you speak I would like to congratulate you on behalf of the committee on becoming a father again. Some members may not be aware of that.

Mr. Sheppard: Where are the cigars?

Mr. Hayes: When you have as many children as I have, you get cigars from other people.

First, I would really like to compliment Dr. Hill and his staff, especially for the fiscal control. Some of the other ministries and government agencies should perhaps take note. This should be a good lesson to them that there are other ways and means of reducing costs and maintaining service without going the easy route of thinking of laying people off. That is not the only way to save money.

I want to ask one question dealing with the stringer offices and the one in Windsor and London. I know right now they are more for the gathering of information and directing it to the Toronto offices. Is it your intent to expand there, to make these people maybe full-time in the future and be able to handle most of the cases locally?

Dr. Hill: We have no precedents. No other Ombudsman's office in Canada is operating regional offices. In fact, we have been asked now to find out how we are doing it. No other offices have put in field representatives or stringers. It is a pilot project for us in many ways. We are starting slowly with people who will be on a contract basis. We are trying to keep our costs down.

However, I have made it very clear in Windsor and London that if the need becomes apparent, if there seems to be a tremendous case load coming up on us, then we are going to have to reconsider and grow accordingly. We thought we would start small, see how it goes, evaluate it in one year, and if that goes well, move on from there.

Mr. Hayes: I would like to bring you up to date. I had a discussion with the warden of Essex county recently, and he has looked very favourably on maybe giving you some office space for your people when they come out into the county.

Dr. Hill: Free space and no heating costs.

Mr. Hayes: He is also considering letting that individual use his office when he is not in it. I will let you know the result of that shortly.

Dr. Hill: That would be very nice. We accept all free offices; otherwise, they are going to work out of their homes.

Mr. Philip: Before we adjourn, I think we would be remiss if we did not note that someone who I think shares a great many of Dr. Hill's views and concerns about ordinary people and human rights has tragically left us as of last night at the age of 84. I knew Mr. Douglas quite well when I lived in Ottawa and I did

some university work out of his office. Since the House is not sitting, I know all members of the committee would want to express our feelings, perhaps our relief in some ways that a great man who was suffering from cancer for some time has now had an opportunity to have some relief for himself, but at the same time a great sadness in our hearts that we have lost a great Canadian.

Mr. Shymko: I would like to join, in a nonpartisan fashion again, in Mr. Philip's remarks. Tommy Douglas, whom I have had the privilege and honour of meeting, speaking to and sharing some concerns when I was in Ottawa, has made an impact in the history of this country that will be lasting, the effects of which we see today in many areas of other jurisdictions and provinces, including Ontario. I think the recognition and respect we as legislators have for him is shared by all Canadians. We will certainly miss his wisdom and compassion, particularly, as Mr. Philip has stated, that humane, compassionate approach to politics that sometimes we see so lacking.

Mr. Baetz: Could I just share in the comments that have been made here, but maybe add a point of more personal interest? Of course, Tommy Douglas was an esteemed member of my riding in Ottawa West and I found it very interesting in the last years that, even though he was suffering from cancer, he took his walk every day along the National Capital Commission Parkway that you all helped to pay for, and those of us who live in Ottawa thank you for that.

When he was taking his stroll, there was a particular park bench where he always decided to take a half-time break or whatever it was. Invariably, there would be 10 or 15 people sitting there or standing around having a chat with Tommy Douglas, and this was really quite an occasion. I thought it indicated the respect people had for him. He obviously enjoyed chatting with them about every major public issue in the world. Of course, it was on that same parkway that he had that very unfortunate accident about a year or so ago when he was hit by a bus. He was certainly a very popular person in the riding and one who transcended party lines.

Mr. Mancini: On behalf of my colleagues on the committee, I want to associate them with the remarks that have been made. Not having had the opportunity to have met Mr. Douglas in no way diminishes the reality for me of the impact he has had on Canadian life over the last half century. We also are sorry to see him go.

Mr. Chairman: Thank you, members and members of the Ombudsman's office.

I think we should adjourn and go on in camera, Dr. Hill.

The committee continued in camera at 12:19 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1984-85
WEDNESDAY, FEBRUARY 26, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

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McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Mancini, R. (Essex South L) for Mr. Bossy

Clerk: Decker, T.

Assistant Clerk: Deller, D.

Clerk pro tem: Arnott, D.

Staff:

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, February 26, 1986

The committee met at 10:29 a.m., in committee room 2.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: I will ask our research officer to go through the Freedom of Information and Protection of Privacy Act, on which she has prepared some material.

Ms. Madisso: You asked me to do a memo on some of the arguments that the committee could make to the standing committee on procedural affairs and agencies, boards and commissions as to why review of Bill 34, the freedom of information legislation, should come to this committee rather than go to procedural affairs.

I think you all have copies of the legislation.

I began with a brief statement on how Bill 34 functions. It establishes the office of Information and Privacy Commissioner. The act provides for an appeal to the commissioner from a decision made under the act. The commissioner may authorize a mediator to investigate and try to effect a settlement of the matter. Where a settlement is not effected, the commissioner is required to conduct an inquiry.

Finally, under section 50, the direct quote from the legislation is, "After all of the evidence for an inquiry has been received, the commissioner shall make an order disposing of the issues raised by the appeal."

The act also gives, in sections 60 and 61, a role to the standing committee on procedural affairs. Section 60 reads:

"(1) The standing committee on procedural affairs shall undertake a comprehensive review of all confidentiality provisions contained in acts in existence on the day this act comes into force and shall make recommendations to the Legislative Assembly regarding,

"(a) the repeal of unnecessary or inconsistent provisions;
and

"(b) the amendment of provisions that do not conform to the purposes of this act."

That is a review they have of other legislation.

Going on to section 61, which is probably the one you are interested in: "The standing committee on procedural affairs shall, within three years after proclamation of this act, undertake a comprehensive review of this act and shall, within one

year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this act."

The standing committee on the Ombudsman wishes to make the case that it, rather than the standing committee on procedural affairs, should have one or both of the above functions. Its reasoning on this matter consists of two steps. First, that the commissioner's function is similar to the Ombudsman's function and, second, that it therefore follows that the standing committee on the Ombudsman, which has had years of experience of reviewing the Ombudsman, should also review the commissioner.

As far as the first step in the argument is concerned, the office of the commissioner is set up in a manner similar to the Ombudsman's office--very similar, in fact. Both are appointed by the Legislature and are officers of the Legislature. For more detail, look at part I of the bill.

However, the analysis becomes more complex when the functions of the two offices are compared. On the one hand, it is true that there are similarities in function because both respond to the grievance of a citizen, do an independent investigation and attempt to mediate the matter. As you know, Dr. Hill does so informally; he is not required by his legislation to do so. The commissioner, on the other hand, is formally required under the legislation to mediate. Both are reviewed by a committee of the House.

On the other hand, there also is a significant difference between the two. The commissioner is empowered by section 50 to come to a final adjudication following his investigation and to enforce this decision with an order. The Ombudsman, as you know, can only report and make recommendations following an investigation. Subsection 22(3) of the Ombudsman Act provides that "the Ombudsman shall report his opinion, and his reasons therefore, to the appropriate governmental organization, and may make such recommendations as he thinks fit...." He cannot order that governmental organization. On the other hand, the commissioner can.

It therefore follows that the commissioner's review by a committee of the House differs from the Ombudsman's report to his committee. The Ombudsman reports because a governmental organization has not implemented his recommendation--subsection 22(4)--and he comes to you for more authority for that recommendation.

Mr. Shymko asked me to look at other jurisdictions, which I did. In New Brunswick, Newfoundland and Manitoba, the Ombudsman has a review function under the freedom of information legislation. However, again, the office makes recommendations only and an appeal lies with the courts for a final determination of the matter.

There is a reason for this and I have included it in the paper. If the Ombudsman had such a final decision-making power, a conflict-of-interest situation could be envisaged. The Ombudsman

might be called upon to make an adjudication regarding disclosure under the freedom of information legislation in a case that he is investigating under the Ombudsman Act.

Mr. Shymko: Could I ask for a clarification? In these other jurisdictions, there is no separate commissioner as is being established in Ontario; the Ombudsman is the commissioner.

Ms. Madisso: I think that varies, let me look.

Mr. Shymko: Do those provinces have freedom of information acts?

Ms. Madisso: Yes, they do.

Mr. Shymko: They do, and do those acts specify that the Ombudsman is the individual who is charged with--

Ms. Madisso: It can go in two directions. There can be a single track to the Ombudsman or there can be a double track--the Ombudsman and the courts; and you choose. Whether there is both a commissioner and an ombudsman, I am not sure. I am trying to find out.

Mr. Shymko: That is really the key in making a comparison. The relationship of other jurisdictions is an argument for our case. The key here is whether there is anyone other than the Ombudsman who deals with the freedom of information act in each of these three provinces.

Ms. Madisso: The key is who makes the final decision. It does not much matter who makes recommendations; you want to consider who makes the final decision.

Mr. Shymko: Another element is that some of these provinces with ombudsmen do not have legislative committees that monitor the ombudsmen.

Ms. Madisso: Yes, that is true.

Mr. Shymko: Maybe Ed Philip would recall which provinces with ombudsmen have legislative committees. We have one and I think Alberta has one. I do not think British Columbia--

Mr. Philip: No, BC does not and that is part of the problem it has had.

Mr. Shymko: I doubt--and Ed may support me in this--that New Brunswick, Newfoundland and Manitoba have legislative committees that monitor the offices of their ombudsmen.

Ms. Madisso: Your argument there is that by coming to the House, the recommendations are strengthened; the Ombudsman has more than just a recommendation function.

Mr. Shymko: Maybe I should not interfere; it is just that I wanted to be clear in what you said. The only thing I see

backing our case is the argument that in some other jurisdictions, the Ombudsman is involved in the freedom of information act.

Therefore, if the Ombudsman is involved in freedom of information areas, it is perhaps normal that whoever was planning the Freedom of Information and Protection of Privacy Act may have contemplated that the Ombudsman would be the person charged with that responsibility or setting up a commissioner.

In the process, they may have contemplated our Ombudsman as a possibility. If they decided to opt for a commissioner, the argument is still there that it is an ombudsman area, therefore the standing committee on the Ombudsman normally could monitor it.

Ms. Madisso: Keep in mind that where there is an ombudsman's function in the freedom of information legislation, the courts make the final decision. Here we have a commissioner. Which route do you want to go? That is the choice that has to be made.

Mr. Shymko: That is a fundamental difference.

Ms. Madisso: Yes, that is a fundamental difference.

Mr. Shymko: It would be worth while finding out two things for us: First, are there legislative committees that monitor the operation of the ombudsmen in those three jurisdictions; and, second, is there any other public officer, in addition to the Ombudsman, who is involved in the freedom of information act in any of these three jurisdictions?

Mr. Philip: I would like to comment on those remarks, but I would rather wait and let Ms. Madisso finish and then go back. I do not want to lose track of the points being made. I think they are valuable.

Mr. Shymko: I am sorry that I jumped in like that; it is just that I wanted to be clear.

Ms. Madisso: That is all right.

We have finished step number one, which is your argument that commissioner and Ombudsman have similar functions. The second step in the argument therefore follows this standing committee should be reviewing it because it has had the experience. The committee may also wish to point out that in its continuing review of the Ombudsman's office, it will be dealing with the freedom of information legislation also.

Mr. Shymko: Could you explain that?

10:40 a.m.

Ms. Madisso: I will just continue with the memo; I think that explains it.

This will be the case because of subsections 46(1) and (4) of Bill 34. Subsection 1 states, "...the exercise of the

discretion of a head to disclose or refuse to disclose a record which is found to be included under an exemption in section 13, 14, 15, 16, 17, 18, 19, 20, or 22 is not appealable." So the exemption sections in the legislation cannot be appealed to the commissioner.

Subsection 4 of the same section states: "The Ombudsman Act does not apply in respect of a complaint for which an appeal is provided under this act...." Where a matter is appealable, the Ombudsman is out; where it is not appealable, the Ombudsman is in. The exemption sections are not appealable, so it follows the Ombudsman is in on matters dealing with exemption sections.

To conclude: Thus, apparently, refusals to disclose under the exemption sections can be reviewed by the Ombudsman and, therefore, by the standing committee. Since it is reasonable to expect that the exemptions will be contentious, there may be a considerable number of such complaints filed with the office of the Ombudsman, which will then, I would assume, come to you.

The third and final argument: Finally, the committee might also wish to argue that it has, historically, always conducted this review in a nonpartisan way and that freedom of information and protection of individual privacy are also matters which should be reviewed in this way. It is arguable that the standing committee on the Ombudsman is, of all committees of the House, best suited by its nonpartisan nature to conduct such a review.

Mr. Shymko: Are we discussing it now?

Mr. Philip: I would like to hitchhike on one of the points Mr. Shymko made.

If we want to convince that committee or build pressure, we have to define what an Ombudsman is. It should not be the legal definition under the act. It should start off with what it is to be an Ombudsman. I think we should have a definition under the Swedish system.

There is plenty of research on it that says, "This is why the Ombudsman's office was formed and this is what an Ombudsman is." Then we should say that, essentially, this is a form of Ombudsman. Therefore, as he is acting in an Ombudsman's capacity, it makes some reasonable sense that the Ombudsman's committee, which has been dealing with the functions and comparisons of Ombudsmen's roles throughout the world, should be the one to deal with it. We are in the best position to be knowledgeable about ombudsmanship or whatever you want to call it.

Second, you have to make the argument that--I think page 2 of the memo is contentious. I do not want to argue with Ms. Madisso. She is a lawyer and I am sure she is able to read the act and everything better than I am. I am fairly convinced from everything I have heard from the Canadian Civil Liberties Association and so forth that this is not appealable to the court.

I do not know the technical arguments but that has to be checked out with Alan Borovoy or somebody similar. If it is not

appealable to the court, then it gives us even more arguments to say there should be some body that is used to dealing with matters of civil liberties.

Essentially, this is a civil liberties act. It is about the right to know what information is stored about you or the right to information about your government and procedures, so is a civil liberties act. There are two sides to it: one is privacy, and the other is the right to information, both of which are civil liberties issues.

Because the Ombudsman is the civil libertarian--other than the human rights commissioner--of the average citizen who is simply hard done by the government, then the committee dealing with the Ombudsman should be the one to handle this.

At that point, we must spell out the exemptions there are under the freedom of information act and say that because of the large number of exemptions, it seems reasonable that a committee of the Legislature dealing on a day-to-day basis with the civil liberties of citizens should be the committee that deals with it.

I think your problem on page 3 was dealt with in an indirect way, perhaps subconsciously, by Mr. Shymko when he pointed out the sentence, "The Ombudsman might be called upon to make an adjudication regarding disclosures under the freedom of information legislation in a case which he is investigating under the Ombudsman Act."

I would be inclined to omit it because if they do not think about it, there is no sense in bringing it up. In case they think about it, we should point out that in Ontario we have a way of dealing with it. We have a standing committee on the Ombudsman whose role is to sit down and look at the procedures of the Ombudsman. Other provinces do not have that safeguard. That is not a problem to the extent it would be where the commissioner reports directly to the Legislature, as under this act.

Mr. Shymko: May I get back to the very point you made about "The Ombudsman might be called upon to make an adjudication regarding disclosure under the freedom of information legislation in a case which he is investigating under the Ombudsman Act." That refers to the three jurisdictions. In other words, the only time the Ombudsman might be called on to adjudicate is if these are cases being investigated by him. Are you referring to New Brunswick, Newfoundland and Manitoba when you make this statement?

Ms. Madisso: I am trying to explain what may be the reason for the route taken by New Brunswick, Newfoundland and Manitoba.

Mr. Shymko: You are just speculating?

Ms. Madisso: I am speculating; that is right.

Mr. Shymko: There is a big difference whether this is the conclusion you are reaching or whether this is the procedure of law followed in these jurisdictions. The reason I am asking is

because that is a key element Mr. Philip just raised. It also has a bearing on the conclusion you have reached on the other important matter; namely, the exemption sections that are not appealable in courts. Subsection 4 says, "The Ombudsman Act does not apply in respect of a complaint for which an appeal is provided under this act...." It does not say, however, that the exempted unappealable sections automatically go to the Ombudsman.

I wonder whether the people who were drafting this bill envisaged the involvement of our Ombudsman in exemption cases. That is your conclusion, but I wonder whether the drafters and the minister, who I guess is the Attorney General--

Mr. Philip: I think that is a key argument in saying this committee gets it. If the exemption sections are appealable to the Ombudsman, then it is reasonable that the Ombudsman committee, which has to review appeals where there is disagreement between the ministry and the Ombudsman, should be the committee that gets the whole thing.

Mr. Shymko: That is the normal conclusion.

Mr. Philip: That is our strongest argument.

Mr. Shymko: Exactly.

Mr. Philip: That is an even stronger argument than the fact he is fulfilling an ombudsman's function because they can point to the federal government, which has five or six different ombudsmen. I think it is a stupid system, but none the less they can say there is a languages commissioner, a military ombudsman--there are three or four of them.

Mr. Shymko: From a purely layman's analysis of this, in other jurisdictions the commissioner can order things; our Ombudsman only recommends. By my reasoning, I cannot understand why our Ombudsman would be involved in areas where the courts cannot even order things. The courts of this jurisdiction cannot order anything under these sections; they are prevented from making an order. Here we have an Ombudsman who is a legal eunuch--if I may use a vulgar term to describe him--who cannot order anything, but can only make recommendations; suddenly he is given the vast power of ordering in an area where even our courts do not have the right to order.

10:50 a.m.

Mr. Philip: He is not ordering. He can only recommend and the Legislature orders.

Mr. Shymko: The exemption sections can go only to the Ombudsman for recommendation.

Mr. Philip: Yes.

Mr. Shymko: If it is just a recommendation, to whom is

it? Obviously, to the Attorney General. It is still up the Attorney General to decide.

Mr. Philip: The recommendation would be to the individual minister.

Mr. Shymko: If a recommendation-denied case ends up in this committee and then we go to the Legislature, it makes the final decision. We become the Supreme Court in the exemption cases.

Mr. Philip: That is right.

Mr. Shymko: That is interesting. I wonder whether the people who drafted this--I think someone should speak with the Ministry of the Attorney General.

Mr. Philip: I do not want to give them a reason to redraft it. That hurts our case.

Mr. Shymko: I like it. If that is the implication, it makes our case.

Mr. Philip: The argument has to be fairly forceful. We make it in very crude terms: "It is going to be a bureaucratic nightmare if two committees are dealing with the same material. We will be recycling it."

Mr. Shymko: Exactly.

Mr. Philip: Why do that? It makes absolutely no sense. That is a key argument that will appeal to the guy who does not know anything about who an ombudsman is and does not give a damn. I am sure all honourable members give a damn about what an ombudsman does and recognize that our Ombudsman is doing an excellent job, but some may not be as acquainted with the tremendous importance of the Ombudsman's function.

Mr. Shymko: Can I make a final point? If that is the case, if that is our interpretation, the commissioner is a junior person compared to our Ombudsman. Our Ombudsman, therefore, supersedes in many respects and is the final authority in areas where the commission is completely deprived of that authority; namely, in dealing with the five or six sections here.

Mr. Philip: That is true of a number of quasi-judicial boards.

Mr. Shymko: Is it?

Mr. Philip: Yes. There was a court case concerning the Ontario Labour Relations Board recently, which the Ombudsman was able to win. He had the power to rule against the decision made by the labour relations board.

Mr. Shymko: I still think we should bring someone from the Attorney General's office to clarify this so that we have a

clear perception of the implications of subsections 46(1) and 46(4).

Mr. Philip: The Attorney General (Mr. Scott) has his advisers. Why do we not use our advisers and ask the Ombudman's legal counsel to come and deal with this?

Mr. Shymko: This is an area where you are involving the people who were drafting and who were seeing a direction for that bill.

Mr. Philip: I want our legal counsel.

Mr. Shymko: There is no way you will succeed unless you bring them here.

Mr. Philip: Let us have Mr. Bell take a look at this and let us have the legal counsel at the Ombudsman's office take a look at it. I do not want the Attorney General's people because everybody who drafts legislation has a vested interest in thinking that he has done the best possible job and that he has done what his minister wanted him to do.

Mr. Shymko: I feel that the conclusion we have reached is not the conclusion of the drafters of this bill.

Mr. Baetz: I agree.

Mr. Shymko: I am convinced of that because of the logic in preventing our Ombudsman from being involved in appealable cases. They do not want this guy involved in cases that are appealable and then suddenly they give him the right to get involved in areas where even the commissioner and the courts have no right; I do not think they intended this.

I may be wrong, but I agree with Mr. Philip: Let us first have Mr. Bell and our counsel take a look at the relationship and perhaps substantiate the conclusions Ms. Madisso has reached. However, stage two, and that is the crux, is the Attorney General's staff and its explanation of how it sees it. If they see it our way, the case is made that it should go before this committee.

Mr. Baetz: I agree with Mr. Shymko's hunch. This is only a hunch, but if it says it is unappealable or nonappealable that is what it means, period. It does not mean you can appeal to the highest authority, the House. That is where a lot of them could end up, could they not? That is the final court of appeal in a sense, but that is appealable then. I do not know. I have an idea that when they said "not appealable," that is what they meant.

Ms. Madisso: What you might end up with is a much broader statement about the jurisdiction of the Ombudsman vis-à-vis this legislation, which is that he will not be able to interfere at any stage.

Mr. Baetz: Yes. If you cannot interfere with the appealable end or the unappealable end, there is nothing left.

Mr. Shymko: Circumventing the authority of the commission all of a sudden by getting another ombudsman, so to speak, and involving him and giving him the ultimate authority is beyond the rationale and simple, never mind complicated reasoning.

Ms. Madisso: The other thing I would like to do is direct your attention to section 61 of the act, which actually describes what the standing committee on procedural affairs and agencies, boards and commissions will be doing vis-à-vis the legislation. Do you see any problem with undertaking the kind of review they talk about in section 61? That is on page 2 of the memo at the top. It is different from the committee and you may get some objection from procedural affairs about this. When you talk about experience, is this really the kind of experience this committee has had?

Mr. Philip: This committee has had precisely that experience. As a matter of fact, that is why we were a select committee originally; we were set up to review the Ombudsman after the Office of the Ombudsman was established. That is why we were called a select committee. It is only recently, because of the ongoing nature of our functions, that we became a standing committee. That point has to be made. This committee was set up--it was before my time on the committee--to review Arthur Maloney's operation. What was two or three years after it had been in operation?

Mr. Shymko: I think it was three years.

Mr. Philip: That is why the committee was set up in the first place. The argument has to be made that this committee has had experience in dealing with precisely this. That is why this committee was established and that is why it was a select committee rather than a standing committee. Get the original act that set up this committee. You can quote from it as to how we were set up to review the Ombudsman.

Ms. Madisso: The standing orders.

Mr. Philip: The standing orders or whatever it was that set us up.

Ms. Madisso: I just raise it as a possible weakness you might get from the procedural affairs committee if you appear before it.

Mr. Philip: I think it is a strength. It is a good argument in our favour.

Mr. Shymko: When the select committee was established--are we referred to in any way? I guess we must be referred to in the Ombudsman Act.

Ms. Madisso: No.

Mr. Shymko: We are not referred to in the Ombudsman Act? That the Ombudsman brings recommendation-denied cases to a select committee? Our act has no reference to us at all?

Ms. Madisso: I gave you what the act provides. It is on page 2.

Mr. Shymko: I think you are misunderstanding me. I am not referring to Bill 34 referring to us; I am referring to the province of Ontario Ombudsman Act.

Ms. Madisso: At the bottom of page 2, when I quote section 22(3), "the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate governmental organization, and may make such recommendations as he thinks fit," that section goes on to talk about, in subsection 4, he may also "report to the assembly on the matter as he thinks fit." I think that is the reference.

Mr. Shymko: That is the reference, that he may refer to the assembly, which means us.

Ms. Madisso: Yes.

Mr. Shymko: This obviously would require extending the mandate of this committee, no doubt in some formal way. There must be something somewhere that says what the purpose of this standing committee is all about. Is it by statement of the House leader when he directs certain things to the committee?

Ms. Madisso: I think it would be your terms of reference; the clerk could tell you.

11 a.m.

Mr. Shymko: Mr. Philip was talking about the definition of the Ombudsman. I would like to know where is there a definition of this standing committee. Is it in an act or in an order of the House? Where is it?

Mr. Baetz: You are searching for its legitimacy.

Clerk pro tem: The committee is set up by order of the House. I do not have a copy of the Ombudsman Act here to search through it and I do not have a clear recollection of whether it refers to the committee. I would have to refer to the act.

Mr. Shymko: According to Ms. Madisso, there is no reference in the Ombudsman Act to this committee; there is a reference to the Legislature, which implies this committee. Therefore, if we are to change our mandate, so to speak, it will have to be done by order of the House.

Clerk pro tem: Yes.

Mr. Shymko: We have to appeal our case to the House in some kind of report by this committee. I do not recall the

elements of our report. We just finalized it last week; it is senility, old age or something.

There should be some reference to our request for an expansion of our mandate. It would make no sense for us to be proponents and advocates of the expansion of our mandate to include international human rights violations and to take on such a case of international affairs, which for compassionate and humanitarian reasons is a very important case we have made and on which we have all agreed, but which many of our members will argue is redundant when we debate it, and keep quiet on this issue in our report.

It is fundamentally important not to limit our discussion today of the rationale and the reasons why the Information and Privacy Commissioner should report to us, but to put it officially in our report to our colleagues in the House. I do not have a copy of the draft of our report, but I would like this discussed and perhaps a formal motion put that we should include this request concerning the commissioner and Bill 34, and that the procedural affairs committee should be replaced by the standing committee on the Ombudsman. It may require wording at another meeting of this committee to put that addition in our report. However, I am appealing to you and to the members of this committee it is essential that we have it included.

We cannot dictate to the House leader or whomever decides to expand our mandate with regard to the wording, but some reference to our mandate should be made. I wonder whether we have the time, in the light of our responsibility to monitor the Ombudsman's office. This is a new office. The Information and Privacy Commissioner's office is a new office and I have no idea how much time it will require to go through the various cases in his responsibility. It may be as much time as is required of this committee to monitor our Ombudsman.

If it means the same amount of time, it means doubling our time. Can we, as a committee, function in doing this, keeping in mind that we also are involved in international human rights violations? You are establishing a very large mandate. For practical reasons, before we move in this direction, I want to consider seriously whether we can handle this area.

In Mr. Philip's absence, I was suggesting that in our report we should perhaps make reference to our concern about being the ultimate body of appeal or the standing committee to which the commissioner will be referred. There is no reference to it in our report.

Mr. Philip: I think that is counterproductive because we are asking for the authority and one voice, and then saying, "My goodness, now that we have this authority, or if we get this authority, we may not be able to do it."

I think the Ottawa bill, the federal government bill introduced by the federal Liberal government, is a better bill than this one. Having said that, the experience in Ottawa is that there are not all that many cases. Part of that may be because it

is better legislation, but the work load of the Information Commissioner of Canada is not very large, as I understand it. That was research information I had last year when I was drafting my bill. I have not had a chance to follow up, but my understanding is that the volume is not all that great.

If you divide by at least four, the volume in Ontario will not be all that great. If you assume that a lot of the cases are resolved, and, furthermore, if you believe in the present government's policy of openness and freedom, then you can assume there will not be very many cases. The opposite view is the cynical view, or if you want, the more realistic view, that one reporter took when I was discussing it with him this morning.

He said some civil servants will use it as an excuse to say, "No, I am not going to give you any information," and let the information commissioner decide whether you have a right to this or not, as a way of delaying things for a period of a year or whatever and holding up things to a point where the information is no longer relevant.

I prefer to be more optimistic and say we will not get very many cases but let us see. If it becomes too large a role, perhaps we would have to look at the possibility, since we have two additional functions, this one and human rights, of having subcommittees of the committee to deal with them. One could concentrate on the freedom of information stuff and the other could concentrate on the human rights stuff.

I do not think we should make arguments for the guys on the other side. If we run into problems, we could share the problems, but let us not make arguments in their favour.

Mr. Shymko: All I am saying, Ed, is that our colleagues will receive the report of this committee in which we request an expansion of our mandate to deal with international human rights violations. It is a special report and it will probably be debated this spring.

If we have a concern for a domestic area, namely freedom of information, it would make a great deal of sense that there be a reference to this in our report to our colleagues. There is not now, or I do not think there is. Do you recall last week when we were drafting--

Mr. Philip: No, because we had not decided on this.

Mr. Shymko: Exactly. That is all I am saying, Ed. We should decide today whether to include this concern and this request in our report to our colleagues in the House, and I think we should.

Mr. Philip: Since what we are presenting to the standing committee on procedural affairs and agencies, boards and commissions should not be more than two pages, it should be fairly simple just to drop this matter into the report. We could say, "The committee was also concerned about freedom of information and made the following report to the procedural affairs committee on such and such a date," and then just pop that in.

Ms. Madisso: That will be in the section on freedom of information in your report?

Mr. Philip: Yes. I do not think you need to rewrite it. Just put in whatever we say.

Mr. Shymko: We should try to put our case succinctly by arguing the page 3 reference of our interpretation of the involvement of the Ombudsman under the Ombudsman Act. It is the only case, because arguing other jurisdictions may complicate things. We may expand on the fact that we have had experience and we have dealt with monitoring cases, etc., but the real crunch is right here in the reference to the appealable and unappealable provisions.

Mr. Philip: We will have to check that out.

Mr. Shymko: Unless we sit down with the Attorney General's staff and John Bell we may be cornering ourselves, because it may not be the intent of the drafters of this bill.

11:10 a.m.

Mr. Philip: The report will stand without that if need be. If it was not their intent and if they are going to plug the hole, our report still stands. The report can be prepared and that can be our last argument and it can be checked. I also suggest that Merike consult with someone such as Alan Borovoy who I am sure is very well acquainted with this bill by this time.

Mr. Shymko: I want to reiterate that we can get Alan Borovoy and we can get Walter Tarnopolsky and a lot of outside people who are specialists in this area, but it is incumbent upon us to ask the people who drafted this bill, mainly the Attorney General's staff, for their interpretation and attention.

Mr. Philip: Right now, though, our problem is one of logistics. Merike cannot do this in 24 hours. It will take some time. Bell is out town. When do we have to--

Ms. Madisso: I want to consult with John, so I think the suggestion that we review this with him is a good idea.

Mr. Philip: When are we likely to appear before the procedural affairs committee, Doug? What is the schedule?

Clerk pro tem: I do not know. I will find out.

Mr. Philip: That is key because I would hate to have us go through all this work and then find out that we cannot appear because their hearings are over.

Mr. Mancini: Their hearings are next week. Is next week March break?

Mr. Philip: No, it is the week after.

Mr. Shymko: We had three weeks scheduled originally.

Mr. Mancini: We have hearings next week, we do not have hearings during the March break and we are travelling the week after that.

Mr. Philip: You are on the procedural affairs committee?

Mr. Mancini: That is correct. We travel the week after the March break and we have hearings in Toronto the week of March 24.

Mr. Philip: On the freedom of information bill?

Mr. Mancini: I have not seen the exact itinerary, but I think we are going to do something about it. I am not sure exactly. Our committee discussed that bill and at the time we felt we would have great difficulties fitting it in with all the other work we are doing.

Mr. Shymko: That is good.

Mr. Philip: That works to our advantage. Would you, or perhaps we should do it formally through the chairman, at least advise them?

Mr. Mancini: The clerk should advise them. The clerk should advise Smirle Forsyth.

Mr. Philip: We are counting on you to argue our point in that committee that we at least get a hearing some time after the March break so we can get our act together.

Mr. Mancini: The clerk should also make the request.

Mr. Baetz: I wonder whether the first step should not be for Merike, very informally and without showing her hand too much, to have a little chat to see exactly what these people meant about the Ombudsman's role here. As I read it, in one section the Ombudsman is ruled out of this thing explicitly and in another section he is ruled out implicitly. Without saying the committee feels it should have a role, you could explore a little.

Ms. Madisso: With the Attorney General's staff?

Mr. Baetz: Yes. Find out what role, if any, they think we should play in this. If we know that, we will know how to move ahead. I have an idea that in the minds of the drafters, the Ombudsman was not supposed to play a role here at all.

Mr. Shymko: I am sure, yes.

Mr. Chairman: I have just been informed that the procedural affairs committee is dealing with Bill 34 on March 25, 26 and 27.

Mr. Sheppard: That gives us time to look at it. As Reuben says, if Merike will have a look at it, we may have time to have a look at it before we ask to go to the procedural affairs committee.

Mr. Baetz: You can be very innocent in your request for some information about and idea of what they mean here, especially in this one. In the 'one section it is very explicit that we are not involved, but what do they mean in the other? If they say, "That simply means unappealable means unappealable. It means you are out of it," then we know what our approach to the procedural affairs committee will be.

Mr. Philip: The only other matter is that we will have time to have the report back prior to making the presentation. We are sitting before that, are we not? I do not have my schedule here.

Mr. Chairman: We have informed the whips that we would like to sit on April 1, 2 and 3.

Mr. Philip: When is the procedural affairs committee sitting on this bill?

Mr. Chairman: They are sitting the week previous to that.

Mr. Philip: A draft should be sent out to all members of the committee, but perhaps a subcommittee should be appointed to go over it and to make the presentation. The chairman and a member of each caucus could be the ones who do the presentation. Does that seem reasonable to you?

Mr. Mancini: I do not know. I am not a full-time member of this committee and I would hate to commit my full-time colleagues who have serious responsibilities to this committee to anything at present.

Mr. Chairman: Mr. Morin is a member of the procedural affairs committee as well.

Mr. Mancini: So is Mr. Newman.

Mr. Shymko: What have we decided, Mr. Chairman?

Mr. Chairman: That is what I was wondering.

Mr. Baetz: Our number one step should be an exploratory visit by Merike soon. It could be as simple as a phone call to the right person who knows what the intent was.

Mr. Shymko: If I may follow up on that, if the interpretation from the Attorney General's office is similar to yours, Merike, I think that would immediately warrant a meeting of this committee, preferably when our counsel is back from his trip. It would also warrant a meeting with the Attorney General's staff to record that interpretation formally and to make a case for us. As suggested by Mr. Philip, a subcommittee could then meet and draft that in whatever shape or form. We should include this in our report and make a case before the procedural affairs committee.

Mr. Philip: We can work out some of those arrangements. Why do we not go in camera and work out some of our strategies in terms of the presentation? Would that be okay with the committee? We have dealt with our concerns on the record.

Mr. Shymko: I wonder if there is anything else we want to say before we go in camera on this issue.

Mr. Philip: I do not think we have anything further to discuss.

Mr. Chairman: Is the committee in favour of going in camera?

Agreed to.

Mr. Chairman: Then the committee shall go in camera.

The committee continued in camera at 11:18 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

REPORT, COMPLAINT OF MR. F
REPORT, COMPLAINT OF MR. R
THIRTEENTH REPORT
PUBLIC SERVICE SUPERANNUATION

TUESDAY, APRIL 1, 1986

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Snppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatnam-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Snyrnko, Y. R. (High Park-Swansea PC)

Substitutions:

Cordiano, J. (Downsview L) for Mr. Henderson

Epp, H. A. (Waterloo North L) for Mr. Newman

Clerk: Decker, T.

Assistant Clerk: Deller, D.

Staff:

Bell, J., Legislative Counsel

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Health:

Reid, R. H., Assistant Deputy Minister, Institutional Health

LeNeveu, R., Assistant Deputy Minister, Administration, Finance and Health Insurance

From the Office of the Ombudsman:

Meslin, E., Executive Director

Morrison, G., Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, April 1, 1986

The committee met at 10:15 a.m. in committee room 1.

ORGANIZATION

Mr. Chairman: Now that we have two representatives from each party, we can begin our deliberations. I am informed by the clerk that, this being April 1, we have to approve the reappointment of our solicitor.

Mr. Philip moved that Mr. John Bell be retained as committee solicitor for another year.

Mr. Philip: Call the question.

Mr. Chairman: All in favour?

Mr. Bell: No debate on that.

Motion agreed to.

Mr. Chairman: Now I can sign this document.

Mr. Bell: I want the name of the man who said April fool.

Mr. Chairman: I now call on our solicitor, Mr. Bell.

Mr. Bell: Members, before we get into the business of the day, let me give you an overview of the next three days. You should all have before you a single-page agenda which has four items on it for your consideration and completion. There are actually five items, but the fifth is implicit in the first two items.

Dr. Hill tabled with the Speaker of the House last month two special reports, being two recommendation-denied cases. They are referenced as items 1 and 2 on the agenda. The schedule is as follows: Item 1 dealing with a Mr. F, which is a matter involving the Ministry of Health, will be considered by you today. It is intended after the public session that you adjourn in camera and deliberate your decision. If a decision is readily forthcoming, the intent is to announce it later today. That same format will apply tomorrow to the second item, which is a matter involving a Mr. R and concerning the Ontario Northland Transportation Commission. Representatives of the commission are scheduled to appear before you tomorrow morning. Those two items should take most of today and tomorrow.

It is intended that items 3 and 4 on the agenda will be dealt with initially tomorrow afternoon, if time permits, or certainly on Thursday. Implicit in item 3 will be a report from the subcommittee concerning the freedom of information act matter which is pending. In any event, whatever remains to put the final touches to the 13th report will be done within three days, so it can be printed and tabled within the next week.

Item 4 is a matter Mr. Hayes raised with us the last time we met. We have to take a couple of steps back on that and redefine the particular matter we were talking about and give it some further consideration. We also have to make some reference to it in the 13th report.

There is a fifth item, and that is within the three days, time permitting, you will complete your report of the items on this agenda, and particularly special reports on items 1 and 2. Then that report can be printed and tabled concurrently with the 13th report so it sits on Orders and Notices with whatever priority it has or whatever backlog is ahead of it.

Unless there are any questions, I propose to get into the first item of business.

Mr. Chairman: Are there any questions? If not, proceed.

10:20 a.m.

REPORT, COMPLAINT OF MR. F

Mr. Bell: Mr. Reid and Mr. LeNeveu, will you come forward and take a place before the committee? Members of the committee, permit me to introduce Ron LeNeveu, assistant deputy minister of Health, and Randy Reid, also an assistant deputy minister of Health. Gentlemen, for the record will you give the particular department or division within the ministry over which you have responsibility?

Mr. Reid: I am assistant deputy minister, institutional health.

Mr. LeNeveu: I am assistant deputy minister, administration, finance and health insurance.

Mr. Bell: These gentlemen may be assisted, if necessary and appropriate, by Perry Brodtkin, who is a member of the legal department of the Ministry of Health and who is also in attendance today.

The clerk, Todd Decker, should have placed before you already a brief of materials that are relevant for your consideration of this item and that have been arranged in appropriate order to permit you to review them as may be necessary throughout the morning. What I propose to do with this case is to take a little more time with the Ombudsman's office in going through the material, not so much for detail as for identification, to review for those who have seen it before and to introduce to those who have not seen it before the process from the initial receipt of the complaint to the various stages of the Ombudsman's investigation and the process resulting in the report with the recommendations and following.

Permit me to introduce Dr. Hill's representatives. You know Eleanor Meslin, who has appeared before you before. With Mrs. Meslin is Gail Morrison, who is Dr. Hill's director of investigations.

May I just spend a little time before I give the matter over to Mrs. Meslin and Gail Morrison? First, you all have the document before you on Mr. F. The first document of interest and relevance is the synopsis at pages 1 and 2. By way of explanation, because of the timing of the tabling of the report with the Speaker and your scheduled hearings, there was not an opportunity for the Ombudsman or the Ministry of Health to complete the synopsis process, so

that what you have on the first two pages is the Ombudsman's version of the synopsis. As I understand it, Mrs. Meslin, there is a response synopsis that--

Mrs. Meslin: The response synopsis was included in our copy of this grey-covered report that all of you should have, and that synopsis is there towards the end.

Mr. Bell: The ministry's?

Mrs. Meslin: Yes. The very last item. There is a letter from the Ministry of Health referring to it on the very next page. It is entitled "Synopsis."

Mr. Bell: The problem is that I do not want everyone to be looking at three or four different sets of documents. Is there a way we could quickly have that document photocopied by the number of--

Mr. Philip: All of us have it.

Mr. Bell: All right--all of us except counsel. Maybe we could have a couple of extra copies taken.

Mrs. Meslin: We have some coming.

Mr. Bell: Some do not have one. We had better have some copies available.

Members will recall that on other occasions, and when time permits, both the Ombudsman and the governmental organization were able to review and discuss a substantial part of any recommendation-denied case from the synopsis. It serves as an agreed statement of facts and issues and generally gives an accurate overview of both--I will use the word "sides"--sides' assessment of what is and is not relevant. We do not have that luxury with this case, or perhaps with the other one tomorrow, but we have something that is almost as good.

What I suggest will happen when we get into a discussion of the relevant issues is that Mrs. Meslin and Gail Morrison will probably review for you the Ombudsman's position from their synopsis. Mr. Reid and Mr. LeNeveu may well review for you from their synopsis, perhaps with some additional documentation.

Having said that, Mrs. Meslin, who is going to be speaking to this on Dr. Hill's behalf?

Mrs. Meslin: Ms. Morrison will, but I have a few opening comments that Dr. Hill has asked me to make.

Mr. Bell: Can you proceed then?

Mrs. Meslin: Committee members, Dr. Hill has asked me to represent him in your deliberations over the next few days.

As you are aware, we are asking you to review two special reports on matters in which the governmental organizations involved have declined to implement the Ombudsman's recommendations. In each of these matters, there is some special urgency. In the matter of Mr. F, there is a June 1986 expiry date on his offer to purchase a licence. Mr. R wishes to retire in the near future.

Once he retires, he cannot make the pension fund contribution that is the subject of our recommendation. I will deal briefly with Mr. F at this time and comment on the case of Mr. R tomorrow.

The Ministry of Health has denied Mr. F's request to transfer a licence from one municipality to another. This licence would give Mr. F the Ontario health insurance plan billing privileges he feels are necessary to provide physiotherapy services to the area in which he wishes to locate. As I have noted, Mr. F's offer to purchase the licence will expire in June. Once the offer has expired, the question we ask you to consider here will be moot.

To assist in your deliberations, my director of investigations, Gail Morrison, will outline the details of this complaint and will answer any questions you may have. She will be assisted by Joy Van Kleef, assistant director, social benefits team, and Michael Zacks, our general counsel. The Ministry of Health will then present its position. If at the conclusion of the ministry's presentation there is further information you wish us to provide, we will be pleased to do so.

On behalf of Dr. Hill and his staff, I wish to express our appreciation to the committee members for making time in their busy schedules to consider these special reports. In cases such as these, it is the Ombudsman's opinion that justice delayed may be justice denied. He is very pleased that through the mechanism of special reports, he may bring matters such as these to your attention.

May I turn it over to Gail Morrison now?

10:30 a.m.

Mr. Bell: Ms. Morrison, before you begin, I have alerted you before today to the format I wanted the committee to adopt in this case, which is a more deliberate than usual review of the documentation. Before we start that review, it would be helpful for members of the committee if you could, using either the synopsis or any other document in the material you consider relevant, give the committee an overview of the facts and the issues you believe to be relevant and the substance of the Ombudsman's recommendations. That is the old trick of telling people what it is you are going to ask for, doing it and then telling them again at the end what you asked for. We can zero back in on those matters when we get to the actual subsection 22(3) report.

Ms. Morrison: The issue in this case is the ministry's refusal to allow Mr. F to transfer a licence to practise physiotherapy to which Ontario health insurance plan billing privileges attach from one municipality to another. The issue is a very simple one and our presentation this morning will be brief.

Mr. F inquired as early as 1980 about the possibility of this transfer. At that time, there were discussions under way between the Ministry of Health and the Ontario Physiotherapy Association to arrive at a "mutually acceptable policy for funding private physiotherapy services in the province." From 1980 onward, Mr. F continued his efforts to be granted the transfer of the licence. In 1983, he was denied it by the then Minister of Health, who outlined the ministry's policy on the matter. Mr. F then complained to the Ombudsman.

Throughout our investigation, the ministry has maintained its position that the area to which Mr. F wishes to transfer is not an underserved area

and therefore it will not allow the transfer. During our investigation, we have attempted to determine whether the area is underserviced and whether the ministry's refusal is reasonable. It was the Ombudsman's conclusion at the end of our investigation that the ministry had unreasonably refused this transfer.

We have gone through our usual process of making the ministry aware of a possible conclusion and recommendation which might adversely affect it. In response to that, the ministry still maintained its position that this transfer of licence should not be allowed. It then went to the final report. As Mr. Bell has pointed out, because there was a short time, the usual response to such a report was received very recently. I would point out that the ministry's position on the synopsis is available in the back of your grey book. When you go through the materials, you may wish to have its synopsis available as well as ours.

As I say, the issue is fairly straightforward. I would like to take you through the documentation you have so you can see the process through which our investigation proceeds. In your background materials, the first page is the synopsis, as Mr. Bell pointed out. That is our synopsis; it is not an agreed synopsis. It must be read in conjunction with the one in the back of the special report.

Mr. Bell: I believe it would be helpful to the committee if you spent a couple of seconds on the facts you have set out on that first page. The committee can then keep those in mind when it goes through the other material.

Ms. Morrison: The background facts to this case involve the ministry's policy towards OHIP billing privileges for physiotherapists.

In 1964, as you can see from the synopsis, the government instituted a comprehensive, prepaid physiotherapy plan for all Ontario residents. Physiotherapists were invited to apply for licensing and were then listed in schedule 9 of the Health Insurance Act as licensed physiotherapists for whom OHIP billing privileges existed.

After 1966, no new applicants were given billing privileges for physiotherapy. Physiotherapists may purchase an existing licence in the same general area in which the practice is at present, but that is the only way in which private practice physiotherapists can obtain OHIP billing privileges.

Mr. F wishes to purchase such a facility; it has OHIP billing privileges, but he wishes to transfer them to another area. The ministry decided not to permit this transfer unless it could be demonstrated that the municipality to which he wished to transfer was underserviced with respect to outpatient physiotherapy services.

In 1981, a joint committee of the Ministry of Health and the Ontario Physiotherapy Association did a survey to identify underserviced areas. It identified the county in which Mr. F's facility would be located as underserviced. It also recommended the encouragement of private practice in that area. There is no private licence facility in that county.

The complainant has support from the community for his application. We have received letters of support as well as copies of a petition supporting Mr. F's transfer. At the conclusion of our investigation, the Ombudsman concluded that the ministry had unreasonably omitted to follow the recommendations of the joint committee to assess outpatient physiotherapy needs.

Mr. Bell: Could we move off that for a while? We can get back to it after we go through the documents.

Ms. Morrison: Sure.

Mr. Bell: The third page is a statement of the legend naming the players to this piece. There is nothing terribly relevant further on that.

Ms. Morrison, you confirmed page 4 as the letter of transmittal from Dr. Hill to the Speaker, and its relevance is that the Ombudsman Act is the act that places the matter before the Legislature, thereby kicking in this committee's terms of reference. You are on side in that way. Can you identify page 5 for the committee?

Ms. Morrison: Yes. This is an interview summary. This was the first document on our file with respect to Mr. F's complaint. Mr. F was interviewed in September 1983, as you can see, and the interviewer at our office then compiled this summary of the interview. Attached to that, as pages 6, 7 and 8, are documents that the complainant, Mr. F, supplied at the time of the interview. Those have been attached for your information.

Mr. Bell: Can we pin down the chronology a little more? He complained to your office in September of that year. Pages 7 and 8 are a letter from Keith Norton, then the Minister of Health, to Hugh O'Neil, presumably the complainant's member. Is that correct?

Ms. Morrison: Yes.

Mr. Bell: In July 1983, he speaks of a wish to purchase the facility in question in the past tense. Can you tell us exactly when this gentleman negotiated for the purchase and transfer of the licence and when he first sought a transfer from the ministry?

Ms. Morrison: His very first inquiries are spoken to by the letter on page 6. He inquired of the Ministry of Health at that time. That was February 8, 1980. Between then and 1983, he negotiated for the purchase of the licence. At the time, July 1983, he was being assisted by his MPP in his request for the transfer. When that refusal was received, he came to our office in September 1983.

10:40 a.m.

Mr. Bell: All right. Let us stay with page 6 for a moment. It speaks to discussions between the Ontario Physiotherapy Association and the government as for the delivery of such services in Ontario and talks about an expected policy. The last sentence in the second paragraph says, "We cannot consider any new private physiotherapy services for billing privileges until then," and then talks about further discussions and submitting a further application.

I take it that prior to 1980, he submitted something that somebody calls an application. He has been told of ongoing discussions between his representative group and the government and that until some result is obtained from those discussions, i.e. policy, there will not be any consideration given to new private services for billing privileges in Ontario.

Ms. Morrison: That is correct.

Mr. Bell: Is that what you believe he understood to be the ministry's position up until the time he complained to your office?

Ms. Morrison: Following that letter to him in 1980, the joint committee of the ministry and the physiotherapy association was set up. At that time, that committee was looking into the whole policy. That committee did a survey to determine which areas of the province were underserved, and it was at that time that the ministry's policy was firmed up with respect to granting OHIP billing privileges only in underserved counties.

When Mr. F came to our office, that policy was already in place. Mr. F's contention was not against that policy, but that this was an underserved area to which he wished to transfer and therefore it was unreasonable for the ministry to refuse him.

Mr. Bell: This is an important point. Your office concluded that the complainant understood and was told there was then a policy of the ministry that permitted the transfer of such a billing licence, but only to areas within Ontario that were deemed to be underserved.

Ms. Morrison: At the time he came to our office, he had that decision. If you go to page 9, you will see the first part of our process. Once we have received a complaint and determined that it is within the Ombudsman's jurisdiction, the Ombudsman must notify the governmental organization involved of the essence of the complaint. It is our practice to give the ministry or organization involved an opportunity to respond to the summary of the complaint, as set out on page 9, before we initiate our investigation.

The initial process is the letter to the ministry. A response is received from the ministry, which you will see on page--

Mr. Bell: Before you leave the letter of December 2, starting at page 9, this letter usually has a nickname, the 19(1) letter, which refers to the section of the act that requires the Ombudsman to notify the governmental organization involved, in writing, of his intention to investigate. As you said, you have included in that procedure, with the giving of this letter, the invitation to the governmental organization to then respond to the complaint as you have set it forth.

Ms. Morrison: That is correct.

Mr. Bell: Can the committee take it that the Ombudsman's assessment and conclusion of the complaint is as set forth in the two indented paragraphs on page 1 of this letter?

Ms. Morrison: Yes, those are the contentions of the complainant. At this stage, the Ombudsman has made no judgement about these contentions. They are set out as the complainant contends for the ministry to review.

Mr. Bell: Let us stop there for a moment. In the first full indented paragraph, the complaint is that he entered into an agreement with Ms. A to purchase the physiotherapy facility, which has OHIP billing privileges, in this Ontario community.

Ms. Morrison: That is correct.

Mr. Bell: The ministry has denied the complainant's request to transfer that billing privilege to his facility, which is in an urban

community in eastern Ontario. In the second paragraph, you record what the complainant's contention is as of this time, that the ministry's decision to refuse the transfer is unreasonable. Then he gives the reason, that Hastings county has been identified by a joint committee as being underserved in respect of OHIP-supported outpatient physiotherapy facilities. He is saying to you upon the initiation of the complaint that he complies with the policy.

Ms. Morrison: That is correct.

Mr. Philip: I have a question. I want to make sure I understand what happened between February 8, 1980, and December 2, 1983. Do you agree that implicit in the last sentence of the second paragraph of the letter from Gerald Gold on February 8 is the promise that after the study has been done there will be consideration of this application?

Ms. Morrison: Certainly, they are not going to consider it before then, and it appears from that sentence that once the review has been completed, they will give consideration to his application. Otherwise, it would not make sense for them to suggest that he make a further application.

Mr. Philip: Between that and the letter from the Ombudsman of December 2, 1983, a study was done and made public.

Ms. Morrison: Yes, a study was done by the joint committee.

Mr. Philip: In that study there was no change in policy that would prevent someone from transferring an operating authority, or whatever you want to call it, a licence, from one jurisdiction to another. The policy that was in place was continued, namely, that there would have to be a proven need for additional private physiotherapy facilities in the area in which the licence was applied for or transferred to.

Ms. Morrison: That is correct.

Mr. Philip: Thank you.

Mr. Bell: Ms. Morrison, I think we are now on page 11.

Ms. Morrison: That is right. Page 11 is the response from the Ministry of Health to the 19(1) letter. The ministry stated it had advised Mr. F that it would consider a transfer of the licence if the facility stayed in the community for which it was licensed. However, the letter said, "in accordance with the ministry's policy, transfer of OHIP billing privileges from the facility's location as listed in schedule 9...to another location outside that municipality is not permissible unless it can be demonstrated that the area is underserved." There is the ministry's statement of the policy to which I referred.

Mr. Bell: The ministry's position is also set forth in the next paragraph, which applies the general to the specific. We will ask Mr. LeNeveu and Mr. Reid to comment, but you can tell me. Did the Ombudsman take from this response that the individual's specific application had been considered against the policy and in the circumstances of the two communities and that a conclusion had been reached that the community to which he wanted the transfer made was adequately serviced with respect to insured physiotherapy services?

Ms. Morrison: That is correct.

Mr. Bell: All right. Is there anything else in that letter you want to bring to the committee's attention that the Ombudsman may have considered relevant for the purpose of his investigations?

Ms. Morrison: Yes. In the next paragraph, the ministry says: "The municipality of Belleville currently has a reasonable level of insured outpatient physiotherapy services available through the Belleville General Hospital." That is the very bottom paragraph of page 11. In the course of our investigation, it was necessary for us to consider what "a reasonable level" might be.

Mr. Bell: To assist the members of the committee, you can confirm that as of this date, and I believe throughout the relevant period of this complaint, all the physiotherapy services in Belleville were located in the Belleville General Hospital.

Ms. Morrison: Yes.

Mr. Bell: All right. That is another way of saying there were no private physiotherapy services with OHIP billings.

Ms. Morrison: That is correct.

10:50 a.m.

Mr. Shynko: May I have that qualified? According to page 12, there is a home care program as well as a general hospital employing nine full-time physiotherapists. The home care program employs three full-time people. I wonder whether this home care program refers to what is said in the second paragraph on page 8, "...hospitals are free to make arrangements with physiotherapists in their communities to provide outpatient services." Is there such an arrangement between a private physiotherapist and a hospital where the private physiotherapist provides the outpatient services? Is that what is meant by home care? Is the home care delivery program delivered by private home care?

Ms. Morrison: I understand it to be in association with the hospital as well.

Mr. Shynko: In association with the hospital. But these are private physiotherapists who make an arrangement. According to page 8, they make an arrangement with a hospital and they can carry on this practice and obviously charge it to the Ontario health insurance plan.

Ms. Morrison: As I understand it, they are employed by the home care program. It is not a private practice.

Mr. Shynko: They are employed.

Ms. Morrison: The home care program employs three full-time and three part-time physiotherapists.

Mr. Shynko: I do not understand what it says on page 8, "...hospitals are free to make to make arrangements with physiotherapists in their communities...." My understanding is hospitals are free to make some form of contractual arrangement with private physiotherapists in their communities to provide outpatient services. I wonder whether that has been explored in any way or whether that suggestion has been made to Mr. F.

Ms. Morrison: I do not think the suggestion has been made to Mr. F because he does not wish to work as an employee at the hospital. He wishes to transfer the billing privileges of a private practice. As I understand it, the home care program is not private practice as such.

Mr. Shynko: That is my question; it is not private practice. When one speaks of an arrangement with a hospital, one does not become an employee of the hospital; one has some arrangement. I guess flexible arrangements could allow for a private physiotherapist to work for an outpatient service, but still be a private operator.

Ms. Morrison: Not without billing privileges.

Mr. Shynko: I am confused by that flexibility. One speaks of flexibility on page 8 and I am completely confused by that.

Mr. Bell: We can do it one of two ways; either they address it now, or they note it and address it when it is their turn. I prefer the latter if it is all right with you.

Mr. Philip: I have a question, Ms. Morrison, that I also hope the ministry will address later. Do you see a contradiction in the December 21 letter between the last paragraph on page 1 and the third from the bottom paragraph on page 2, which is page 12 in our reference? How can the municipality of Belleville have "a reasonable level of insured outpatient physiotherapy," and then you say on the next page that you are going to get additional funds for physiotherapy? If you have a reasonable level of care, why do you squander money buying additional care? The two paragraphs seem in contradiction.

Ms. Morrison: Yes, Mr. Philip, I was going to get to that.

Mr. Philip: I am sorry.

Ms. Morrison: On page 12, there are a couple more points I want to point out in the ministry's response just before I get to your point. The first is in the second paragraph on page 12. The ministry has said, "Approval of the transfer of billing privileges to Mr. F's facility in Belleville would generate an increased volume of claims to OHIP, which would impose an added burden to the ministry's financial resources."

The complainant, of course, contended that it did not matter where the bills came from, that they were the same bills and that this would not add to OHIP's liability.

Mr. Bell: What do you say to that?

Ms. Morrison: I think he is correct in that. I certainly do not think it makes a difference whether the OHIP billing is in one community or another in terms of the volume of OHIP claims.

Mr. Bell: There is something missing in that equation. You are assuming by that that the same people in both communities are going to be using the service, are you not?

Ms. Morrison: No, I am assuming that he can do about the same amount of work at one facility as at another.

Mr. Bell: Do you know if that is so?

Ms. Morrison: Whether he would have more patients? Is that the question? No, I do not know.

Mr. Snyanko: May I ask for clarification once again? You could apply the same logic to cut the number of doctors graduating from our medical institutions. In other words, the more doctors who graduate and open up facilities, the more claims there are to OHIP. Is it logical to assume that?

Ms. Morrison: It would be logical. We are not talking about a new OHIP billing privilege here. We are talking about a transfer of an old OHIP billing privilege; that is quite different.

Mr. Snyanko: But it is moving a new operator, be it a doctor or physiotherapist, into an area. When a new doctor or physiotherapist opens up his own clinic, with the doctor, we say, yes, there are more claims to OHIP. Would not the same logic--

Ms. Morrison: Then there could not be claims at the other facility.

Mr. Philip: Following that logic, they would be less than at the old clinic.

Mr. Bell: Wait a minute. In fairness to the ministry--and I know Mr. Reid and Mr. LeNeveu will address the point--the paragraph does not say there will be an increased burden on OHIP. It says there will be an "added burden to the ministry's financial resources." I understand you agree with the complainant's position. No? What you are going to hear, when the ministry addresses it, is a discussion on the global budget of the Belleville General Hospital for physiotherapy and the impact of private billing privileges in the same community. We can leave it at that for now.

Ms. Morrison: That is true, Mr. Bell. That brings us back, though, to the point that was just raised about the expansion of facilities in the Belleville area. That may be very true, but they will argue that, having these services in the Belleville area, they must then use them, in other words, not give Mr. F his licence. As you can see, at the time of this response they were just then expanding Belleville.

Mr. Bell: You put your finger on a key issue. It depends on when one examines the circumstances.

Mr. Cordiano: This is December 21, 1983. When did Mr. F make his request?

Ms. Morrison: His first request was back in 1980.

Mr. Cordiano: Virtually three or four years have elapsed.

Ms. Morrison: That is correct.

Mr. Cordiano: Then the decision was not made at that time?

Mr. Sheppard: What is your distinction among the home care program, the Belleville General Hospital and the doctor? Was there any relation here, from your point of view?

Ms. Morrison: As far as Mr. F is concerned, his request was to purchase private practice OHIP billing privileges. The home care program, as I understand it--and I think the ministry is going to speak to this--is for physiotherapists. Mr. F wishes to have a private practice of physiotherapy. There is a difference.

Mr. Sheppard: Maybe I have the wrong definition of a home care program. I thought that to get home care you had to go through your local doctor, not through the general hospital. Is this correct?

Ms. Morrison: I am sorry, but I am not sure of the details of the home care program. I am sure the ministry will be able to answer that when it comes up.

Mr. Sheppard: I will ask the ministry people when they have their time.

Ms. Morrison: There is one other point I would like to make about the minister's letter while we are there. In the third paragraph from the end, you will notice that the grants being given are to Belleville General Hospital to establish a satellite service in Madoc and that the second grant is to the Red Cross Hospital in Bancroft. To continue with our process, you can see that the ministry gave us a thorough response, setting out its view of this matter. Once we received this response, we identified the issues as we saw them and the investigation began.

11 a.m.

Mr. Bell: The next document is what we call the section 19(3) letter. You will explain the content and the purpose of that letter. You can confirm that between Graham Scott's response in December 1983 and the section 19(3) letter on page 13, the Ombudsman's investigation was under way and, in a significant way, completed.

Ms. Morrison: That is correct.

Mr. Bell: All right. Can you explain why it took so long, from December 1983 to February 4, 1986, to bring the investigation to the 19(3) stage?

Ms. Morrison: Yes. There were several reasons for that. One is that the kind of information we needed required a considerable time to get. As you will see when you read the report, it was necessary for us to find out whether the ministry's statement that the area was not underserved was correct. That required us to do some research through a survey.

The other reason this complaint took quite a while is that it was coupled with another complaint. That other complaint has not reached you; it turned out not to be one on which the Ombudsman made a recommendation. However, the two complaints were investigated hand in hand, and that slowed down the investigation of this particular complaint because we were trying to do both of them at once. They involved the same kinds of issues, although not exactly this issue.

Mr. Bell: All right. I will use this word advisedly. Who bears the responsibility for the 25-month interval between the receipt of the 19(1) response and the issuance of the 19(3) letter?

Ms. Morrison: Our staff.

Mr. Bell: Okay. We are going to be reviewing some of the reasons because of some of the things that you did.

Ms. Morrison: Yes.

Mr. Bell: Will you highlight what you consider relevant and helpful for the committee from the 19(3) letter?

Ms. Morrison: Yes. First of all, I should explain what a 19(3) letter is. It is a letter that is written pursuant to subsection 19(3) of the Ombudsman Act, which requires the Ombudsman, if he is about to make a conclusion or a recommendation that might adversely affect a ministry or a person, to give notice in the form of tentative conclusions and recommendations and allow the ministry or the person to respond. This is a kind of administrative fairness. He must not finalize his investigation until he has given the ministry the opportunity to speak to his possible conclusions and recommendations.

This letter, dated February 4, 1986, was the 19(3) in this case. It sets out at the bottom of page 1 and on page 2 the possible conclusions and recommendations of the Ombudsman. One of the possible conclusions deals with the ministry's obtaining of information on which it bases the assessment of whether an area is underserved.

Mr. Bell: That conclusion is a general one?

Ms. Morrison: That is right.

Mr. Bell: As you have set forth, it has to do with what process the ministry does not have, or perhaps should have, to be able to assess needs concurrently or to respond as appropriate. The second conclusion is the specific one as for the individual.

Ms. Morrison: That is correct.

Mr. Bell: It says quite simply that the decision to refuse the transfer was unreasonable, as it does not appear to be based on up-to-date information. Bear in mind that this is only tentative at this stage.

Ms. Morrison: That is correct. The tentative recommendations follow: first, a general one with respect to the ministry's information gathering; and second, the recommendation that the ministry grant permission to Mr. F to purchase and transfer the licence in question. The rest of the letter sets out the basis on which the Ombudsman is making these tentative conclusions and recommendations.

You will find, when you compare this letter with the final report, that it is very similar. As Mr. Bell noted earlier, our process is not usually quite as collapsed at the end as this. You will see that the date of our 19(3) letter is only February. Because of the special urgency in this case, because we wished to conclude our investigation and get out our final report, the 19(3) letter and the report followed one another fairly closely.

The ministry's people were given an opportunity to respond to the 19(3) letter. However, we also told them at that time that, if they could not

respond in fairly short order, we would go ahead and issue our final report. They agreed with us at that point that they would give us their position on the final report when they were ready. That is the position set out in our synopsis.

Mr. Bell: So we can complete that, what we will find farther on in the material is that the March 1986 letter from Dr. Dyer is intended by the ministry, and accepted by the Ombudsman, to be a response to both the 19(3) letter and the final report.

Ms. Morrison: That is correct, but in that process we were in touch with the ministry's representatives. They knew we were prepared to have their submission at any time. It was just that we had to go from the possible conclusions and recommendations to final conclusions and recommendations expeditiously.

Mr. Bell: Is the need for expediency the deadline the gentleman now has imposed on him?

Ms. Morrison: That is correct.

Mr. Bell: What has happened? Has he obtained a series of extensions of this and now run out of extensions?

Ms. Morrison: That is correct. The final option runs out in June 1986.

Mr. Bell: Is that on June 30 or June 1?

Ms. Morrison: I think it is June 30.

Mr. Bell: Is there anything else in the 19(3) letter you want the committee to consider?

Ms. Morrison: At this point, it would be useful to run through a few things from the investigation as they are set out in the 19(3) letter. The first paragraph on page 3 outlines the meetings of the committee which was reviewing the need for the physiotherapy services. You will see that recommendations specific to the county in question were made by that committee. Those recommendations are set out in two points, and we have added the emphasis.

It was on the basis of these recommendations that the complainant originally said: "This is an underserviced area. There is a need for physiotherapy services in this community. Therefore, the ministry's response to me that I cannot transfer because it is not underserviced is unreasonable."

You will also see in the middle of page 4 some examples of the support the complainant had from this community, and you will see at the top of page 4 part of the reason for the length of our investigation.

The Ombudsman states: "It seemed to me that a current assessment of the situation...was necessary. Therefore, we conducted a survey of all medical practitioners, without regard to specialization" in the area, to establish whether there were adequate physiotherapy services in the area. It was our information, based on that questionnaire, that indeed there were delays in provision of physiotherapy services and that the area was still underserviced.

Mr. Bell: To zero in, in the third paragraph of page 16, Dr. Hill notes the results of the survey showed it takes, on average, from two to four weeks for a patient to obtain an actual appointment for assessment after receiving a physician's referral for physiotherapy services. Then you go on.

Mr. Philip: This is a two-part question, one part medical. Did you find out how that compares to other communities? Is this community being unreasonably treated in comparison to other communities? Would this be a normal waiting time in other communities?

Ms. Morrison: I cannot answer that. I do not think I have the information with which to answer that.

Our conclusion was that two to four weeks was quite a long time to wait for an assessment date. Part of our investigation included talks with physiotherapy departments of the city hospitals. We asked them about the urgency of physiotherapy treatment. It was the feeling from those discussions that two to four weeks was a very long time to wait for physiotherapy services and that in some cases acute damage might result if urgent physiotherapy could not be undertaken.

11:10 a.m.

Mr. Philip: You are getting into my second question, which is a medical question. What is the medical effect? I realize each individual case is different. There can be a difference in a sprain as compared to a major operation, but--

Ms. Morrison: It was our information that with back problems, for example, it is quite an urgent matter to obtain physiotherapy services immediately.

Mr. Philip: In a simplistic way, in terms of the fellow who wants to get back to work, are you telling me a one-week delay may result in more than one week in terms of his becoming active or mobile again because there is a compounding effect in certain types of medical conditions if therapy is not begun fairly early after the diagnosis?

Ms. Morrison: Yes, and you should note that what we are talking about here is an appointment for assessment. This is not the beginning of treatment. This is a two- to four-week wait to be assessed, to see what treatment would be sensible.

Mr. Bell: Mr. Philip and Ms. Morrison, this is a good time to do it. I do not want you to turn to it now, but in pages 36 through 42 of the material--Ms. Morrison will take us through it when we get to subsection 22(3)--you will find both a sample copy of the questionnaire that was sent out, and starting at page 40, the actual response results, so you can assess for yourselves what the answers were and how relevant they may be to the issues at hand.

Mr. Baetz: I have two questions here. I am not sure whether they are to be directed to counsel, to the Ombudsman or to the ministry, but I am sure they will all respond as is relevant.

In October 1980, the physiotherapy needs review committee was established by the Ministry of Health, and it found that 16 areas throughout the province were deemed to be underserved with respect to available physiotherapy or outpatient services.

This question may be to the minister, to the Ombudsman or to counsel. What happened in those other 16 areas? Were there any cases there where a similar situation prevailed, where there was a practitioner who bought or wanted buy a licence and to become involved in providing this kind of service under OHIP? If not, why not? However, was there any kind of a precedent set in any of these other areas?

The other question is this. Is the issue here--I am not saying it is the issue, but I am asking the question--whether the Ombudsman is in effect challenging the validity of the ministry in providing a service to a community? If that is the issue, then could this not apply to almost every part of government activity?

In other words, in the field of housing, the Ombudsman could say: "I challenge the Ministry of Housing's assessment of needs in this particular area. You are not providing adequate housing." Therefore, he can lay charges or make a statement. He can do it in the community and social services field. He can do it in almost any other field.

Is that the issue in this case, or is the issue a very specific one dealing with a specific practitioner who wants to transfer the practice from one area to the next?

Mr. Bell: Let me try. I do not know the answer to your first question, and I will venture to say the Ombudsman does not know the answer, but it is a very good question to ask the ministry representatives. For any of the 16 areas identified, was there during this material time period any transfer of an OHIP billing licence into one of those underserved areas? That is the question.

The second issue you put, in fairness to you, has not yet become apparent. We are going through documentation as part of a learning process. In my view, the real issue has not jumped out yet, but I will put what I think is the real issue. Is the ministry's policy, that any expansion of physiotherapy services in any area of this province should be through the public health care field, to be fettered in any way; i.e., notwithstanding the ministry's policy to that effect, should someone be permitted to transfer a private OHIP billing licence as part of the expansion policy?

I do not believe the parties are in disagreement on the underserved nature of this area at a certain time, i.e., 1980 through 1983. You will see material that makes that apparent, and you will see the ministry took steps to further expand that service, but it expanded it in the public health care sector as opposed to the private sector. That is really the issue, at least it is as far as the ministry is concerned, and I believe it is even as far as the Ombudsman is concerned fundamentally.

Mr. Baetz: That is a very major issue because one can apply the same principle to virtually every other field. It has been mentioned in here that the district health council became involved in this, and other people were involved in a needs and resources study. Even staying within the field of health care, there are many cases where a district health council and/or the profession in any area--it is the case in Ottawa, and I am sure it is the case in most communities--are saying, "There is a drastic shortage of chronic care beds, geriatric services or whatever, and here are our priorities."

Sometimes nothing is done immediately, or the ministry will say, "In the fullness of time we are going to meet this need, etc.," but the Ombudsman has

never moved in and said: "Hey, wait a minute. You are violating something that comes within my purview here and you must move fast now. This practitioner, this agency or whatever, must be allowed to provide the service."

Mr. Philip: I do not think that is the issue. The issue is that in the absence of policy--

Mr. Epp: Mr. Baetz raised a very interesting question, but is the question here not whether the transfer of the licence was unreasonably withheld by the ministry considering the policies it had? Is that not the basic question?

Mr. Philip: That is the key.

Mr. Epp: Without trying to judge the overall policy, but having stated the policies it had, was the transfer of the licence unreasonably withheld? That is as I understand it.

I know what Mr. Baetz is directing his thoughts to, and it is a very important part of this whole discussion. The representatives of the Office of the Ombudsman can speak for themselves, but from what I have heard and read, I do not think they are saying here that you have to reconsider all your policies. What you have to do is reconsider the application of those policies in those individual situations. Maybe they erred in this situation and maybe they did not. I am not prepared to say at this point.

11:20 a.m.

Mr. Bell: Mr. Epp, you are correct. You have posed the question and answer. That is the issue, but to answer the question after you have put the issue, one must address the minister's policy, which is that any expansion of physiotherapy services in this province is going to be via the public health sector and not the private sector. When we boil this down, in my view--the ministry people can speak for themselves--that is what they said, or it is what they meant by what they said: "We will not permit this transfer."

Ms. Morrison: Mr. Bell, I would point out that was not the minister's response to Mr. F's request. The minister's response to his request was: "You could transfer this licence if you were going to transfer it to an underserved area. This is not an underserved area; therefore, you cannot transfer it." In response to Mr. F's request, the ministry at no time said, "The reason you cannot transfer this is that we prefer to provide the service through the public hospital."

Mr. Bell: You are absolutely right. If that is their bottom-line position, they are going to have to give explanation today why they have not said it.

Mr. Philip: The issue is not whether you agree with the so-called stated policy now, but whether there was a policy at that time and whether there was a violation of that policy. In the absence of policy, one has to conclude there was no policy at that time. Therefore, in this case, the person can exercise his rights as they then existed.

You may recall a time when I argued in this committee that the Ministry of Housing had no authority to label a bunch of people as speculators. Whether or not they were speculators or should have made excessive profits, the issue in that instance was that the ministry had no policy that prevented someone from doing it. In the absence of policy, the person had every right to take the particular advantage that was open to him.

That surely is the issue. Whether we agree or do not agree there should be private physiotherapists is not the issue. The issue is whether there was a clearly stated policy. In the absence of any stated policy to discriminate against the private enterprise physiotherapist, one has to assume that a policy that did not exist cannot be imposed retrospectively. I am sorry; I guess I am arguing what should be argued in camera.

Mr. Baetz: Of course, if there is no policy, you cannot violate the policy.

Mr. Shynko: I want to ask the representatives a few questions. My understanding is that only 100 physiotherapy facilities currently have the OHIP billing privilege. Since the freeze of 1966 one speaks about--is it 100 or 120? What is the figure?

Ms. Morrison: I do not have that figure; presumably the ministry has it.

Mr. Shynko: How many private physiotherapy facilities are there now operating with the privilege of OHIP billing.

Ms. Morrison: The ministry can look into that for you.

Mr. Shynko: Okay, but there is a set number. From what you have told us, my understanding is that the currently existing numbers are somewhat similar to the numbers in 1966, when the freeze came in.

Ms. Morrison: That is correct. Do not forget, we are not trying to create a new licence here; this is an existing OHIP billing.

Mr. Shynko: Do you not question that policy at all?

Ms. Morrison: The question of the freeze?

Mr. Shynko: Yes.

Ms. Morrison: That was not the issue before us. The issue that was before us was whether he should be able to transfer this licence to another area.

Mr. Shynko: I am getting to that. Let us say there are 100 that have the privilege of OHIP billing because they were granted that through arrangements made before 1966. How many private physiotherapy facilities in the province do not have OHIP billing privileges? Do you have that information?

Ms. Morrison: I do not have that information either.

Mr. Shynko: Do you believe there are a number of private physiotherapists who operate without OHIP?

Ms. Morrison: I believe there are.

Mr. Shynko: It may be close to another 100, or it may be even more. We assume there are private physiotherapists out there who charge a fee and are not billing OHIP. It may be interesting to know how many there are.

Do you agree that you are not proposing, nor is anyone proposing, that there should be an unrestrained or uncontrolled buying of licences from the

100 there are? There has to be some control, and you do not question that. Am I correct in assuming this?

You do agree there has been a policy that the transfer of licences of those frozen in 1966 is allowed, but only for the 16 underserviced areas. When were the 16 underserviced areas, by definition, declared as underserviced? Was it in 1966?

Ms. Morrison: They were identified by the report.

Mr. Shynko: That was 1981.

Ms. Morrison: That is right.

Mr. Shynko: When this man applied in 1980, in 1981 we knew from an agreement by the ministry and the physiotherapists that these were the 16 underserviced areas. The area he wanted to transfer his licence to was named as underserviced.

Ms. Morrison: That is correct.

Mr. Shynko: Has the policy decision of 1983 to expand the public approach to servicing underserviced areas changed the situation in some of those underserviced areas?

Ms. Morrison: In that they are no longer underserviced?

Mr. Shynko: By definition, are they no longer underserviced?

Ms. Morrison: I do not have that information. I certainly have the information that in this particular area, there has been an expansion through funding to the outlying areas. I noted two in the original document: a grant for a satellite and another grant for another town.

Mr. Shynko: It can be assumed there is a change from the existence of the servicing of the area in question in 1986 compared to 1981. Obviously, there must be some change with the moneys allocated and the expansion of the service. By definition, the area may well not qualify as underserviced today. Is that possible?

Mr. Philip: That is not relevant to the justice of this case.

Mr. Shynko: I know; I am getting to that. Today, in 1986, it may well be defined as serviced rather than as underserviced.

Ms. Morrison: It may.

Mr. Shynko: It may, but it definitely was not during the period of 1980 to 1983-84, when this gentleman was applying.

Ms. Morrison: It was defined as an underserviced area.

Mr. Shynko: We are trying to say it is not underserviced under the present conditions or whatever surveys you may have taken or whatever surveys the ministry may have. We are saying that in the period of time when this man applied it was an underserviced area, so retroactively he should be given that type of licence according to the principles. Is my understanding correct?

Ms. Morrison: The issue is exactly that. He was told he could transfer it if he wished to transfer it to an underserved area. This was identified as an underserved area, but he was denied the transfer. Part of our investigation was to try to see whether it was an underserved area. As we noted, our survey showed there were these delays.

Mr. Snyko: I will probably have to ask the ministry this question. What clout do the recommendations of this joint committee have? A joint committee's recommendations may be just recommendations and not necessarily policy. That may be the whole question. Was the naming of that area as underserved a recommendation that it be designated underserved or was it a statement that it was underserved? Recommendations are recommendations.

Ms. Morrison: It was a result of their survey. They surveyed physiotherapist services across the province. They then identified underserved areas as a result of that information. They made recommendations to meet the underservicing problem. Those are the two recommendations which appear on page 15.

Mr. Snyko: I have gone through this. Is there a statement anywhere from the then Minister of Health that says this area was underserved for that period, namely, from 1980 to 1983?

Ms. Morrison: The committee that identified the underserved areas was a joint ministry-physiotherapy association committee.

Mr. Snyko: You considered the statement or the recommendations of the joint committee as being the same as a statement made by the Minister of Health.

Ms. Morrison: I think the ministry said he could transfer the licence to an underserved area. The only way we can identify underserved areas is from that document.

Mr. Snyko: The ministry may have been involved in a joint committee study. I wonder how the weight that definition of the recommendation from the joint committee per se carries as a statement of the ministry. In other words, is a statement of the joint committee basically the same as if the minister were to say it?

Ms. Morrison: They acted on it. They have increased the services; so they must have felt it was underserved.

Mr. Snyko: The actions taken by the ministry obviously reinforce the fact that it was underserved.

11:30 a.m.

Mr. Cordiano: I want to reiterate what has been said and to put it in a different light. The ministry's response in that letter dated December 21--

Mr. Philip: Which page are you on?

Mr. Cordiano: I am on page 12 of the report. The response states, in effect, that there will be an expansion of services in the communities in question. Therefore, they anticipate there will be no need for additional

services and deny Ontario health insurance plan billing privileges to the private sector physiotherapist. As I understand it, the policy would state that it was an underserved area from 1980, when he first applied, to the time that these services would then be available. But this was in anticipation of these services.

Ms. Morrison: That is correct. As I noted on page 12, the grants that they are speaking of are not to this community itself. The grants were for what they call satellite services. It was for that reason that we did the survey to try to determine whether the community to which he wished to transfer was still underserved.

Mr. Cordiano: There is another issue here concerning OHIP billing privileges. As part of its denial can the ministry use the reason that anticipated services would be available in the future? The ministry is essentially arguing: "We are going to have additional services. Therefore, this is going to overlap somehow with OHIP billing privileges in that area."

Ms. Morrison: As far as Mr. F is concerned, the ministry responded to him that he could not transfer the licence because the area was not underserved. The fact that the area is underserved may be spoken to by the fact that the ministry has since that time poured funds into that area. As far as Mr. F is concerned, he considers it unreasonable for the ministry to have denied him the transfer for the reason it did. It said it was not an underserved area when in fact the ministry's subsequent actions would only lead one to agree that it was an underserved area.

Mr. Cordiano: Exactly so. The anticipated services could not be used as a reason for denial. That is what I am saying, speaking to the policy that was in effect.

Mr. McLean: The fourth and fifth paragraphs in that letter indicate that the ministry gave hundreds of thousands of dollars to about 36 hospitals across the province. Is that not an indication that it is looking after what were deemed to be underserved areas within that 1980 review?

Ms. Morrison: They are certainly putting money into the underserved areas; there is no doubt about that. As far as Mr. F was concerned, he felt that its policy was also to allow transfers. In fact, they said in the response to him, "We allow transfers to underserved areas." He said: "This is an underserved area. Why can I not transfer?"

The fact that it is putting funds into this area is a good thing; no one would quarrel with that. It is trying to deal with the underservicing problem. There are several ways to deal with that, and Mr. F contends that his transfer of the licence would have been one reasonable way to deal with the problem.

Mr. McLean: It appears to me that it is trying to get the physical therapy services into the hospitals and not so much in private hands.

Ms. Morrison: That is the underlying policy. As far as this particular complaint is concerned, that is not the question.

Mr. McLean: Okay. I have one further question. In the area that Mr. F is in now he has not got a licence. He wants to buy one from another area and transfer it.

Ms. Morrison: He can buy this licence and keep it there.

Mr. McLean: But he wants to transfer it.

Ms. Morrison: That is right.

Mr. McLean: If he transferred it to one that is an unlicensed clinic, then all the people he is dealing with now would come under that same licence. Therefore, he would be able to claim all the ones he is treating.

Ms. Morrison: However, the facility that was licensed before will no longer be licensed.

Mr. McLean: That is right. What he is doing is buying a licence and transferring it so that he can bill every patient under it.

Ms. Morrison: That is correct.

Mr. McLean: The ministry is saying: "We are offering these services from the hospitals. We do not need that extra service from you."

Ms. Morrison: They did not say that at the time. They said, "You cannot transfer it because this is not an underserved area."

Mr. McLean: The ministry's letter indicates that they are supplying a lot of funds across the whole Hastings county, Bancroft and Madoc area for those services.

Mr. Philip: But not at that time, though.

Mr. Epp: Now.

Mr. McLean: But they are now.

Mr. Philip: Whether they are now is irrelevant to the justice of the issue at that time. That is the problem.

Mr. McLean: Yes, but the issue is before us today, not two years ago.

Mr. Philip: You cannot deny justice. You cannot do things retroactively. Whether you agree or disagree with the government's present policy is irrelevant to what the policy was at that time.

Mr. Epp: The question is whether the ministry acted properly at that time.

Mr. Cordiano: I have a supplementary. Perhaps this policy is a new policy of the ministry--to expand the physiotherapy services via the public route. With regard to that, the original policy did not change as a result of that possible new policy. Am I correct in assuming that? It was not an instance where this new policy would sort of negate the original policy whereby one could transfer OHIP billing privileges to another area that was underserved.

Ms. Morrison: Yes. As I have said, there were several ways of dealing with underservicing. We never got a statement that said, "No more transfers." The ministry statement was, "Transfers, but only to underserved areas."

Mr. Cordiano: Right. The fact that they were now moving in a different direction, possibly to have physiotherapy services via the public route would not preclude anyone from transferring the OHIP billing privileges to another underserviced area.

Ms. Morrison: That is as we understand it.

Mr. Cordiano: Okay. Thank you.

Mr. McLean: What happens when the people of the Millbrook area require treatment after that licence is moved? What is going to happen to the people in that area?

Ms. Morrison: That is not an underserviced area.

Mr. McLean: Who is going to look after the service? If that licence is moved to Belleville, how are those people--

Ms. Morrison: There are licensed physiotherapists in that area.

Mr. McLean: Other than this one.

Ms. Morrison: Yes.

Mr. McLean: Maybe it is overlicensed?

Ms. Morrison: Mr. F obviously thinks so, because he prefers to go to the new location.

Mr. Shynko: Overserviced.

Mr. Morin: When was your questionnaire circulated? What date? Is it the one on page 36?

Ms. Morrison: Did the dates get obliterated? The last page of the letter says, "It would be appreciated if you could provide the response by June 17, 1985," so the survey was early in 1985.

Mr. Morin: That questionnaire more or less confirms the opinion of the joint review made by the Ministry of Health and the Ontario Physiotherapy Association Committee that there was a need in that particular area. So, Mr. Shynko, that more or less confirms it. There was a report made in 1980 and the Ombudsman conducted his own inquiry.

Mr. Shynko: Survey.

Mr. Morin: Survey. He still found a lack of services in that area.

Mr. Shynko: Based on the facts prior to 1985.

Mr. Morin: Exactly.

Mr. Shynko: But the ministry says that from September 1985 to March 1986--they mention the last six months--the average waiting time was two weeks, not four.

Mr. Morin: So there was a change in a year and a half.

11:40 a.m.

Mr. Shynko: I thought it was a contradiction. I thought somebody was lying, but obviously a different survey must have been taken by the ministry in the last six months they refer to. The waiting period was two weeks, whereas the Ombudsman's survey says it was four weeks. I do not know whether that survey reflects the reality of the change today.

Ms. Morrison: Our information is based on our early 1985 survey.

Mr. Shynko: Obviously, the ministry is not questioning your figures, nor are you questioning the ministry's figures for different periods.

Ms. Morrison: That is as may be.

Mr. Sheppard: I would like Ms. Morrison to explain to me what is meant by satellite services and how would it be done in Madoc, Marmora and the North Hastings District Hospital in Bancroft. On page 15 it says, "0.5 to Belleville and 0.5 to Trenton." Would you explain that terminology?

Mr. Philip: Why do you not ask that question of the ministry when it is up?

Mr. Sheppard: I intend to, but I would like to ask the Ombudsman's office too.

Ms. Morrison: You are referring to recommendations on page 15?

Mr. Sheppard: Yes.

Ms. Morrison: Those were recommendations which came out of the joint committee. When the joint committee did the survey and found the underserved areas, it then made recommendations with respect to various areas. In the particular county to which Mr. Epp would like to transfer this licence, its recommendations were the two that are there, that is, 0.5 unit physiotherapist services to Belleville. The second recommendation was to encourage private practice.

Mr. Sheppard: Was consideration given to the Red Cross hospital in Bancroft? I would think Bancroft would be closer to Peterborough than to Belleville.

Ms. Morrison: Those two recommendations did not speak to that. The ministry subsequently expanded facilities in Bancroft.

Mr. Sheppard: Would the facilities be in Bancroft one day or two days a week, or would somebody be there on a full-time basis? What is your conclusion on that?

Ms. Morrison: As far as we understand it, from what the ministry has responded to our notice of intention to investigate, the grant to the Bancroft hospital was to expand its part-time outpatient physiotherapy program to a permanent one.

Mr. Sheppard: Did the Ombudsman look into how many licences or how many physiotherapists were in Peterborough, as Millbrook is only seven miles from Peterborough?

Ms. Morrison: Yes. There are three.

Mr. Sheppard: Three licensed physiotherapists?

Ms. Morrison: Yes. That is my information.

Mr. Bell: Ms. Morrison, we have answered and dealt with a lot of issues that follow the material. We can move along fairly quickly now, members of the committee, and at least finish all of the Ombudsman's initial submissions before the lunch break.

Just for the record, the next document is page 18, which is Dr. Hill's covering letter to Dr. Dyer transmitting the section 22(3) report, which is why we are all here.

Ms. Morrison: That is correct.

Mr. Bell: It is fair to say that because of the timing and the agreement that the ministry would respond once, the Ombudsman did not receive or consider anything new between those matters set forth in his section 19(3) letter and the 22(3) letter?

Ms. Morrison: That is correct.

Mr. Bell: In a substantial way at least the preliminary and background matters in the 22(3) report are as we have seen before?

Ms. Morrison: That is correct.

Mr. Bell: And with that preamble, the report itself starts at page 19 of your material?

Ms. Morrison: That is correct.

Mr. Bell: The first page is a restatement of the initial complaint which was found in the section 19(1) letter?

Ms. Morrison: That is correct.

Mr. Bell: The first two thirds of the second page is a restatement of the ministry's response to your 19(1) notice setting forth the four basic issues, that there could not be a transfer unless it could be demonstrated that the area is underserved, the municipality of Belleville is adequately served with respect to insured physiotherapy services and so on. We have seen all that before. Two thirds the way down page 20, Dr. Hill starts his summary of the facts disclosed by his investigation. Is this correct?

Ms. Morrison: That is correct.

Mr. Bell: We have seen those two paragraphs before; they are in both the 19(1) and 19(3) sections. On page 21, the first paragraph refers again to the efforts of the physiotherapy profession for private licences and the discussions between the ministry and the committee of physiotherapists. It refers to the two specific recommendations that we have already looked at. Correct?

Ms. Morrison: Yes.

Mr. Bell: Going down page 21, the next paragraph deals with the funding issue that we have just talked about with respect to the particular area.

The next paragraph refers to the ministry's conclusion that Belleville had a reasonable level of insured outpatient physiotherapy services. Then there is Dr. Hill's conclusion that the ministry did not appear to have based that position on any current statistics. So he went out, and through his efforts and the efforts of your office, prepared his own survey and interpreted the results of that survey. Is that correct?

Ms. Morrison: That is correct.

Mr. Bell: At the top of page 22, the first three paragraphs briefly summarize what Dr. Hill considers to be the more salient issues of the survey for the purposes of his report. Is that correct?

Ms. Morrison: Yes, the results of the survey.

Mr. Bell: Members of the committee, forgive me, but please turn to page 36 of the material. I am going to have to do a little flipping back and forth for the next couple of minutes. Forgive me for this, but I think it will be more useful to everybody if we look at the survey and results with these three paragraphs than at another time. Pages 36 through 39, Ms. Morrison, are a sample of the survey questionnaire submitted?

Ms. Morrison: That is correct.

Mr. Bell: Can we turn to pages 40 to 42? They are the results of the answers that were received back?

Ms. Morrison: That is correct.

Mr. Bell: Am I reading this correctly on page 40 that your office determined there were 55 physicians in the area that should be surveyed?

Ms. Morrison: Yes.

Mr. Bell: You sent a copy to each one?

Ms. Morrison: Yes.

Mr. Bell: You received back 35 responses?

Ms. Morrison: That is correct.

Mr. Bell: So I am reading that correctly?

Ms. Morrison: Sorry. I am informed there were 61 surveys sent, but only 55 reached their destinations. They were returned.

Mr. Bell: The total surveyable group is 61?

Ms. Morrison: Yes.

Mr. Philip: If the guys have moved, they are not surveyable.

Mr. Bell: We do not know, so it is 55. That is a fair comment. Can you refer the committee to the questions which are relevant to the conclusions summarized in the first three paragraphs on page 22?

Ms. Morrison: Yes.

Mr. Bell: The first one is obvious. There were 66 per cent of the practitioners who responded. That is just the simple fraction of 35 over 55. Right?

Ms. Morrison: Yes. Our results showed that on average it takes from two to four weeks for a patient to obtain a referral. Question 3 asks for the average time between referral and the setting up of an assessment appointment.

11:50 a.m.

Mr. Bell: Before we go any further, members, it is better if we start at page 40 and look at that survey sample because it has the answers in it. It is better than flipping between the blank copy and the--

Mr. Philip: Page 40?

Mr. Bell: Page 40 or 42. We can use those as samples of the survey and the results.

You have referred us to question 3 as indicating two to four weeks on average for a patient to obtain an actual appointment for assessment.

Ms. Morrison: Yes, and that will read as an average of those figures.

Mr. Philip: May I ask a methodology question on this? I am not saying doctors would be intentionally dishonest, but did you do any spot checking to find out whether in contacting the patients the actual number of days was similar to the responses of the doctors?

If I were a doctor who had just had trouble getting into physiotherapy somebody who had been waiting for eight or 10 days, and I was annoyed at that, especially if I received a question such as this where I was asked about the average number of days, I would tend to skew it in one direction.

Also, it is in my interest as a doctor to get additional physiotherapy into an area because I am the one who gets well from the patient when I cannot get an earlier appointment, because of his pain, etc.

Ms. Morrison: We did not survey patients; we surveyed only doctors. Our investigation would have taken considerably longer had we done a survey of patients.

Mr. Philip: You will admit there is a certain weakness in this, that psychologically a doctor may be prone to exaggerate the length of waiting time because it could be in his interest to do so. I am not saying he intellectually says, "I am going to be dishonest and give the wrong answers," but we naturally see things from our own perspective. If I had just had an argument with a physiotherapist when trying to get my patient in I would be more likely to--

Ms. Morrison: But he may just have had a very good experience as well. He may have got a patient in as soon as he called that day. It seems that it may balance out.

Mr. Philip: People remember the bad experiences longer than the good ones. Your answer is that there is no way of knowing.

Mr. Shynko: I still have some questions to ask. I do not know whether some terminology you use on page 1 of your synopsis is by definition in an act or a policy.

Point 2 of "Facts" says that since 1966, when the freeze was imposed, "physiotherapists are permitted to purchase existing licences if the facility is operated in the same general area." What are the criteria of the term "the same general area"? Does it mean a county area? Does it mean the area that by definition, or the purposes of an area by definition, is applied to the qualification of being underserviced?

Does this apply to the ministry's view? Because the ministry's responses constantly refer to the Belleville area as being adequately serviced, what is meant by "the same general area"? Are Millbrook and Belleville considered to be the same general area, or does it mean the area of Belleville?

Ms. Morrison: The ministry's comment on our synopsis perhaps fixed that question. It says, "The Ministry of Health policy allows for the transfer of billing privileges only when the purchaser agrees to maintain the approved facility within the same municipality or to move to a municipality identified as underserviced by the ministry."

Mr. Shynko: The Belleville area, by definition, in what you describe as the same general area, is a municipality area and not a county area. When a county is declared as being underserviced it does not necessarily mean a part of that county, namely, a municipality within a county, is underserviced. There may be municipalities within a county that are not only serviced but also overserviced.

Ms. Morrison: According to the results of the survey of the joint committee, the area that would identify it as underserviced was divided by county.

Mr. Shynko: In other words, according to the joint committee definition of an underserviced area, it applied it to Hastings county; it did not apply it to a municipal boundary definition of the same area. That is quite different from the weight of arguments you are giving to the joint committee report.

Mr. Baetz: I have a short question on protocol. It may not be very important, but it is of interest to me.

I notice the exchange of correspondence is between the Ombudsman and the deputy minister. As far as I can see, nowhere in all of this has the minister replied. Perhaps it is a minor thing, but it seems to me that when an answer from the ministry is a final no, it should be the minister who signs the letter.

Ms. Morrison: It goes to the minister. You will see on page 26 that the copies were sent to the minister.

Mr. Baetz: They are sent to the minister, but the minister has not yet replied. The minister has not sent anything.

Mr. Bell: I think I can help. We can ask the ministry representatives to comment if they think it is appropriate.

As I recall, a long time ago the then Ombudsman worked out an arrangement with all ministries that investigations would commence at the deputy level and that it was left to the deputy to decide whether and to what extent to involve the minister at any time. I believe that is the procedure that exists for the Ministry of Health; so when the letter was first sent to Graham Scott in 1983, it was pursuant to that procedure.

Mr. Baetz: I notice that Mr. Norton, as minister, signed one of the letters. All negotiations go on between the Ombudsman and the deputy, but when it comes to the final decision as to whether a ministry is going to accept the recommendations of the Ombudsman, it is the minister who has the right to say.

Mr. Bell: The minister was involved at that point.

Mr. Baetz: It is just a minor point.

Mr. Epp: I think it is a very important point.

Mr. Bell: Can I have Ms. Morrison take us through the survey and the relevant answers and results that make up the conclusions in these three paragraphs?

You answered question 3, Ms. Morrison, as the one supporting the two- to four-week average for the time between appointments for assessment and referral. Let me make an observation and you can comment. You told me it is a weighted average. The total number of physicians who responded as having referred patients is 29. The number of responses up to two weeks is 14 out of 29. The number of responses more than two weeks is 12. On any weighted average basis, now do you get the conclusion that the time on average was two to four weeks?

Ms. Morrison: The average is calculated by multiplying the number of responses in the bin by the percentage of people in the bin and dividing the whole thing by 100 per cent. That is what I mean by a weighted average. If you have three people who say five days and five people who say eight days, the eight-day answer has more weight in the average than the five-day answer. That is what I mean.

Mr. Bell: I understand that. Another way of expressing those responses is that there were more physicians who got their referrals within two weeks than there were who took longer than two weeks.

Ms. Morrison: That is true.

12 noon

Mr. Bell: Your next conclusion is, "Treatment appears to commence between one and seven days after assessment." What answers are relevant to that conclusion?

Ms. Morrison: Numbers 4 and 5 on page 41.

Mr. Bell: All right. We had better jump down to the next paragraph on page 22: "The responses of those practitioners who referred greater than six patients per month for outpatient physiotherapy services were compiled." Where do we see these statistics, greater than six per month, in this survey?

Ms. Morrison: This is the total survey. We also sent to the clerk compiled answers for the physicians stated in this paragraph.

Mr. Bell: Sorry?

Ms. Morrison: There is another set of pages like this--they were sent to the clerk--

Ms. Meslin: There is a missing appendix.

Ms. Morrison: --which compiles the responses of practitioners who referred greater than six patients. The only one that has been included in the material is the one for all responses.

Mr. Bell: All right. Who is referred to in the second paragraph on page 22? Who are the respondents?

Ms. Morrison: The practitioners.

Mr. Bell: All of them are qualified by those who referred six a month?

Ms. Morrison: Qualified by--I will have to look at that survey. Just a moment.

Mr. Bell: Can you tell us?

Ms. Morrison: Yes. Just a moment, please.

Mr. Bell: Let me telegraph where I am going. If that sentence refers to all the people who have responded, I think your calculations are out. If you look at question 9 on page 42, which asks, "Do you believe the present level of availability of insured outpatient physiotherapy services is satisfactory?" out of a total of 29 physicians who referred, 26 responded. If you use 26 as the base, you only have 65 per cent saying no. If you use 29 as the base, you have something less than 60 and closer to 50.

Ms. Morrison: That is based on those who referred six patients or more.

Mr. Bell: How many of the 29 referred six or more a month?

Ms. Morrison: Hold on. Of the 35 respondents, six indicated they do not refer patients at all. Of the 29 names, 11 reported six or more physiotherapy referrals per month.

Mr. Bell: We have approximately nine of the 11 who said they were not satisfied.

Ms. Morrison: I can get that figure for you. Just a second. Question 9, yes, eight.

Mr. Bell: We will not quarrel with five per cent. Eight out of 11 said they were not satisfied.

Ms. Morrison: Yes.

Mr. Bell: Is that eight out of 29 or eight out of 26?

Ms. Morrison: Actually my compiled answer states that eight were not satisfied and two answered yes to that question. I am not sure where the 11th

erson went. He did not respond to that question. He was either satisfied or not satisfied.

Mr. Bell: In fairness, the 80 per cent has to be qualified by 10 or 11 people.

Ms. Morrison: That is correct.

Mr. Philip: I have a question. I want to try to see what kind of figure I can get if I combine questions 3 and 4 to get some idea of what the maximum waiting time might be. I am not quite sure what to do with item (e), question 3. In question 3(d), if I were to take the mean of two to four weeks between the referral time and the setting up of the assessment, I am left with a mean of three weeks. Is that correct?

Ms. Morrison: That is right.

Mr. Philip: Since I do not know quite what to do with (e), I suppose the only thing I can do is put a three plus on that.

Ms. Morrison: A four plus, I think.

Mr. Philip: A four plus on it? You are talking about only 3.8 per cent.

Ms. Morrison: Longer than four weeks, not longer than three weeks.

Mr. Philip: What I am trying to do though is get an average of the waiting time before the assessment. Since there is 42.3 per cent between two and four weeks, the mean is three. In addition to that, there are some that are more than four weeks, but a very small percentage. For statistical purposes, I will have to say it is probably a three plus.

Ms. Morrison: Three plus meaning three weeks plus?

Mr. Philip: Yes.

Ms. Morrison: No, four weeks plus, because that question says, "longer than four weeks," not longer than three weeks.

Mr. Philip: You are not getting my point. The response to the question that says "longer than four weeks" is so statistically small that I cannot really work it in to the much higher statistic of 42.3 per cent. Since I am talking about a majority of patients or a large number of patients, it is more suitable that I use (d) than (e) to try to get a handle on what is going on with these patients. The mean of (d) is three weeks.

Ms. Morrison: Yes.

Mr. Philip: However, because there is a small statistic, namely, the (e) statistic, would it be correct if I took a three plus for question 3 as being the worst-case scenario?

Ms. Morrison: Yes. Then you would not have included (a), (b) or (c) in your calculations.

Mr. Philip: That is right, but I am talking about only 45 per cent. If I go to question 4 and take 4(c), I drop my percentage to 21.8, or roughly

22 per cent, and the mean there between one and two weeks is 1.5 weeks. What I am saying is that in the case of at least 22 per cent of the population, the time between the time of referral and the time of treatment is four and a half weeks plus. Is that a correct statistical analysis of that?

Ms. Morrison: That is correct.

Mr. Philip: Roughly one fifth of the patients are waiting just under five weeks for any treatment whatsoever.

Ms. Morrison: For treatment. That is correct. Our report spoke to two to four weeks for a patient to obtain assessment, but not treatment.

Mr. Philip: There would be a small percentage. Gosh, it has been a while since my graduate school course in statistics. It seems that at least 22 per cent of the population are waiting just under five weeks for any kind of help.

Mr. Bell: I think we had better get our definitions. This survey does not speak to the number of patients who experience these time factors; it speaks to the number of doctors surveyed who have patients who have experienced them.

Ms. Morrison: That is correct.

Mr. Bell: In fairness, your conclusions have to have that gloss over them. You have not undertaken an analysis in any of these categories of how many patients are involved.

Ms. Morrison: No.

Mr. Bell: When you say "weighted average," I am not sure weighted average is appropriate for these statistics. You are dealing with individuals; you are not dealing with quantities or numbers represented by these averages.

Ms. Morrison: It is a weighted average of the responses.

Mr. Bell: Yes. That is right.

12:10 p.m.

Mr. Philip: Since we have no reason to assume that the doctor who sends two patients a month gets any faster or slower service than the doctor who sends 20 patients per month, in the absence of any evidence to the contrary, one can assume that only the figure is constant between those doctors who send fewer patients and those doctors who send a larger number of patients.

Mr. Cordiano: That may be an entirely different definition.

Mr. Philip: No. You cannot simply argue that because the doctors are saying their patients--You are counting only doctors' heads and not patients' heads, according to the figures we just worked out. According to the doctors' estimates, at least 22 per cent of those doctors say the waiting time is somewhere around 4.5 weeks plus. In the absence of any evidence to the contrary that the doctors who refer only a few patients have different answers than the doctors who refer a large number of patients, one can assume there is a consistency among only the patients.

Mr. Cordiano: I do not know.

Mr. Bell: We have 11 who refer more than six. I do not know where those 11 are spread among these statistics. I know what you are saying. I just do not know.

Mr. Philip: I am just replying to your question. You cannot infer the converse.

Mr. Cordiano: You cannot simply by the fact that you have not surveyed patients. You are surveying doctors, and their response is what has been indicated in the survey.

Mr. Philip: There is no evidence that the doctors who refer fewer patients are any different from the ones who refer large numbers of patients. Therefore, the only figures you can take are the doctors' figures.

Mr. Cordiano: You may be right, but that is not verifiable in these--

Mr. Philip: The reverse is not verifiable.

Mr. Cordiano: That is correct.

Mr. Philip: In the absence of any evidence that suggests there would be a reason that they be different, you have to assume they are not.

Mr. Cordiano: Make the assumption. That is only an assumption; that is not really a fact.

Mr. Philip: An assumption is reasonable if you cannot think of any reason for something being different.

Mr. Cordiano: Why is this even an issue? I do not think it is an issue.

Mr. Philip: It is an issue because John brought it up.

Mr. Bell: Touché. Ms. Morrison, what questions in the survey support the conclusion in the third paragraph on page 22? Is it number 7?

Ms. Morrison: Yes.

Mr. Bell: How does number 7 help you?

Ms. Morrison: That is an increase in availability.

Mr. Bell: I do not understand those percentages at all, unless we are dealing with more than 100 per cent variables.

Mr. Philip: Question 7 is irrelevant to the issue anyway because we are dealing with a different time frame.

Mr. Bell: No. I am just interested in phrasing a conclusion in the third paragraph in his report to the survey. How do we read it?

Ms. Morrison: I think you read question 7 as saying that 19 found a difference in time required and 18 did not.

Mr. Bell: Which is two more than answered, for starters.

Ms. Morrison: That is correct.

Mr. Bell: Some people might have answered more than once. Do we conclude that 70.3 per cent of those who answered this question found there was a difference in service?

Ms. Morrison: Yes.

Mr. Bell: How can we then conclude that 60.6 per cent of those who answered the question believed there was not?

Ms. Morrison: I believe there is an error in the numbers you have here.

Mr. Bell: Do you want to take that under advisement until after the lunch break?

Ms. Morrison: Yes. We compiled these in a hurry.

Mr. Bell: All right.

Mr. Cordiano: Let me throw a monkey-wrench into all this. When was this survey conducted? I do not think that was answered before.

Mr. Snyko: Early 1985.

Mr. Cordiano: Does this speak to the issue of the time that elapsed from the time the application was made to the time the denial was submitted?

Mr. Bell: It gives one a photograph in mid-1985 of what some members of the profession in that area believed to be the quality of available insured services.

Mr. Cordiano: This is after the services were expanded at the two hospitals.

Mr. Bell: Yes.

Ms. Morrison: That is true.

Mr. Cordiano: That is not the key issue in trying to deal with the major issue at hand.

Mr. Bell: You may be perfectly right. It may not be for us and it may not be so ultimately. What is significant is that it is one of the conclusions the Ombudsman sets forth in his report, presumably in support of his final conclusions and recommendations.

Mr. Philip: It does cast some shadow on the assertion by the government that there were adequate services two years earlier, in support of which it did not provide evidence.

Mr. Cordiano: It does not speak to that at all.

Mr. Philip: It casts some shadows.

Mr. Cordiano: It does not answer that question about two or three years earlier.

Mr. Philip: The ministry did not prove its point that there were adequate services. All you have is one taken two years later.

Mr. Cordiano: That is another question for someone else. We can pose that question to the ministry. I do not think this survey is going to answer the question whether there were adequate facilities in the period in question.

Mr. Philip: If we can assume there is a fairly stable population in that area--and there is; it is not like dealing with Metropolitan Toronto--and if we know for a fact additional services were provided, then we can assume the survey taken two years after the additional services were provided would more likely be in favour of the government's position than against it.

Mr. Cordiano: You can assume what you want.

Mr. Philip: Since it obviously is not, I think it assists the Ombudsman's position.

Mr. Cordiano: You can make any assumption you like, but the point is that we do not have any factual evidence for the period in question, unless we go back to the joint committee.

Ms. Morrison: What we do have is the fact that at the time of this survey it appeared to us there was underservicing, and that was after new facilities had already been provided. One might think that a few years earlier, before those new facilities were provided, there was also underservicing. That is all that is being said.

Mr. Bell: On that point, where does this survey tell you there is underservicing as of mid-1985?

Ms. Morrison: It does not tell us there is underservicing. It tells us what the delays in patient referrals are. That is all it tells us.

Mr. Bell: I venture to say you have taken the main statistic that flows from question 3.

Ms. Morrison: That is right.

Mr. Bell: I want to quote you correctly. You have said, "...it takes, on average, from two to four weeks for a patient to obtain an actual appointment after receiving...." The Ombudsman has concluded that supports a conclusion of underservicing. Am I right?

Ms. Morrison: It supports our conclusion. That is from referral to assessment.

Mr. Bell: Yes. What standard did he use in determining or concluding that two to four weeks on average is underserviced?

Ms. Morrison: It was not compared to a standard. It was used as part of the information about whether there were adequate facilities in the area. We do not have a standard.

Mr. Cordiano: What would one consider underserviced? You have to compare it to something to make that statement.

12:20 p.m.

Ms. Morrison: We considered the results of our survey to indicate both that practitioners were not satisfied with the level of service and that the level of service indicated delays of the kind that are here.

Mr. Cordiano: You say practitioners were not satisfied. Can you point to a question in the survey where you have asked for their opinion in a qualitative fashion?

Ms. Morrison: Question 9.

Mr. Cordiano: There are 26 responses out of a total of 35.

Ms. Morrison: Yes. Some people would not answer every question on the survey.

Mr. Cordiano: Of course. That would substantiate your belief that there was a lack of available services or that the amount of time that was involved was not adequate.

Mr. Philip: The onus is on the government to define adequate service and it has not done that. In the absence of any definition, one has to assume the Ombudsman's definition would be given the benefit of the doubt. If you are going to have a policy and you do not define it, you cannot scream that somebody is in violation of your policy.

Mr. Cordiano: That is not the point here. We are dealing with the information we have. We are questioning the validity of that information and going on from that point. That is what we are addressing.

Mr. Shynko: That is a very crucial element. When you ask 55 doctors to reply to a survey, I imagine those who participate in the survey are concerned that there is a problem. Following that logic, those who do not participate in the survey do not feel there is a problem.

Mr. Cordiano: That is another assumption.

Mr. Shynko: That may be an assumption. There are so many assumptions.

Mr. Cordiano: You cannot make that kind of assumption.

Mr. Philip: You cannot conclude that. It may be that the doctors who did not reply were not--

Mr. Shynko: Were too busy. Or do not care.

Mr. Philip: No, no. There are a number of reasons why they may not have replied. One may be that they do not refer people to physiotherapists. In other words, if I were a gynaecologist or an anaesthetist, I doubt very much that I would refer too many people to physiotherapists. I might not reply because this is not relevant to me.

Mr. Shynko: Perhaps we should look at page 35, which probably has a greater bearing than the survey if you look at statistics.

Mr. Bell: Mr. Shynko, can we reserve page 35? It is a very important document that comes from the ministry and I want to put it in its proper

context. It is distracting to introduce it while we are talking about the Ombudsman's report.

Ms. Morrison: In terms of the standards, in the third full paragraph on page 21, we report, "During the course of our investigation we were informed by ministry officials that according to verbal information received from the administrator of the Belleville General Hospital, there was no delay in obtaining outpatient physiotherapy treatment within the municipality." That is why we have quoted figures about the number of weeks it takes.

Mr. Bell: Before we go on with the rest of the report, to put the survey results in context, the ministry told you the area was adequately serviced. You received some conflicting signals before that and said, "Let us test it ourselves." You tested it with the survey and you concluded that those results showed underservicing.

Ms. Morrison: It showed there was a two- to four-week delay rather than no delay.

Mr. Bell: You concluded the area was underserviced.

Can we move on to try to finish the report before the luncheon break?

The rest of page 22 speaks of support from individuals or groups in the community for the transferred service.

Ms. Morrison: That is correct.

Mr. Bell: The last sentence is important: "There is no private licensed physiotherapy clinic in Hastings county," the county in question.

Page 23 is a restatement of your 19(3) letter. We do not have to look at that any further.

On page 24, Dr. Hill sets forth his final conclusions and recommendations. Would you take the committee through those, please, referring back to any other material you think is relevant?

Ms. Morrison: Again, the conclusions are one general one about the ministry's methods of obtaining information and the lack of current information and one specific one to do with Mr. F, that the ministry's decision to refuse to allow him the transfer he requested was unreasonable as it was not based on up-to-date information.

Flowing from the two conclusions are two recommendations. There is one general one with respect to the methodology of collecting information. The second, specific one is that it grant permission to Mr. F to transfer the licence in question.

Mr. Philip: What you are saying in the first one is that it is not adequate methodology for the ministry to call a hospital administrator, who probably has very little direct patient contact anyway, and say, "Are you getting good services in physiotherapy?"

Ms. Morrison: "Are you giving good services?" That is right.

Mr. Philip: He is bound to answer yes.

Ms. Morrison: We did not feel the information we had received from the ministry was persuasive that there were no delays.

Mr. Cordiano: What you are saying in effect is that the ministry based its decision on a lack of information.

Ms. Morrison: That is correct.

Mr. Cordiano: To the best of your knowledge, it was a lack of information.

Ms. Morrison: Yes. The only information we alluded to in the report from the ministry was information it had obtained from the administrator of the Belleville General Hospital stating there was no delay.

Mr. Cordiano: You were aware of no other available data.

Ms. Morrison: That is why we did our survey.

Mr. Baetz: This surely gets us back to the basic issue I was talking about earlier, and that is a question that not only applies in this instance to the Ministry of Health but also could apply to any other ministry. Here the Ombudsman is challenging the methodology of establishing needs and resources and so forth. When we get to that point, I would like to ask whether it is appropriate for the Ombudsman to challenge that kind of survey.

We have been talking about the methodology here. Mr. Philip had all kinds of questions about the methodology followed by the Ombudsman's study and survey. These are highly technical, very difficult areas. How do you assess whether a community is being adequately served in its health care? How do you establish the priorities and so forth? We are getting into a very technical area here.

I have some reservations about this, quite apart from the individual in this case, Mr. F, who is not even the issue here. The issue is, did the Ministry of Health make the proper decision? We are questioning its methodology, database and assessment methods and challenging the procedures it had established for continuing needs reviews, etc.

We are getting into a very technical area, and I think the committee should look at this whole issue. If we agree and support the Ombudsman in this in relation to the Ministry of Health, we are going to have to do it for the Ministry of Housing and for the Ministry of Community and Social Services. We can challenge the Ministry of Transportation and Communications about how it establishes whether an area should get a four-lane highway, a two-laner or whatever. It goes on and on.

12:30 p.m.

Mr. Philip: May I respond to that? I think the issue is the same one the Provincial Auditor deals with. The issue is whether there is a policy in place. He is not questioning whether the policy is right. The issue is not whether you privatize or deprivatize services. The issue is whether there is a policy in place and whether that policy was carried out. That is a legitimate question for either the Ombudsman or the Provincial Auditor to ask.

Were there clear, set objectives in place and were those objectives carried out? It is not whether those objectives were right or wrong, because

that is a ministerial and government decision. It is whether the objectives were clear and whether they were carried out. In this case, the Ombudsman is saying the objectives may be clear, but they had no way of measuring them and their conclusions were not in keeping with the stated objectives.

Mr. Baetz: Can I respond to that? That leads us back to a question that was asked earlier this morning: To what extent were the recommendations made by that task force--or whatever they called it back several years ago--binding on the ministry and to what extent had they been implemented in other areas of the province? Was this another report that went to the ministry where it had to make certain judgement calls and set certain priorities, such as, "We can meet the needs in this area, but not in that area right away and maybe later on here"? I am very anxious to hear what the Ministry of Health says about that in other areas.

Mr. Cordiano: The only thing that is binding on the ministry is its policy.

Mr. Philip: That report was relevant only to this, not to the recommendations it may have made with regard to expanding or not expanding services. It was relevant only to this issue with regard to its conclusions that certain areas were underserved and that the ministry was in fact saying that this area, namely, the Belleville area, was adequately serviced. It is purely a factual piece of information from the report that applies to this case.

We are not dealing with whether the report is government policy, whether it is adequate or inadequate or whether we agree or disagree with the report, but whether there is factual information in that report that can be applied to this case and to the statement by the ministry that there were adequate services at that time and therefore, according to its policy, there was no need to give this guy the licence.

Mr. Chairman: This is something we will have to get into afterwards. The committee is adjourned until 2 p.m.

The committee recessed at 12:33 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

REPORT, COMPLAINT OF MR. F
REPORT, COMPLAINT OF MR. R
THIRTEENTH REPORT
PUBLIC SERVICE SUPERANNUATION

TUESDAY, APRIL 1, 1986

Afternoon Sitting



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Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Cordiano, J. (Downsview L) for Mr. Henderson

Epp, H. A. (Waterloo North L) for Mr. Newman

Clerk: Decker, T.

Staff:

Bell, J., Legislative Counsel

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Morrison, G., Director, Investigations

Meslin, E., Executive Director

From the Ministry of Health:

LeNeveu, R., Assistant Deputy Minister, Administration, Finance and Health Insurance

Reid, R. H., Assistant Deputy Minister, Institutional Health

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, April 1, 1986

The committee resumed at 2:17 p.m. in committee room 1.

REPORT, COMPLAINT OF MR. F
REPORT, COMPLAINT OF MR. R
(continued)

Mr. Chairman: Now that we have members from all parties, we will continue.

Mr. Bell: When we broke off this morning, we had about come to the end of a review of Dr. Hill's section 22(3) report. Ms. Morrison, is there anything more you want to say about the report before we look at the ministry's response?

Ms. Morrison: I have a very brief matter. First of all, I would like to correct the information on your survey. Question 7 had incorrect information in it.

Mr. Bell: This is on page 41 of the material?

Ms. Morrison: Yes. The responses were "yes, nine" and "no, 18." The percentages are 33.3 and 66.6 respectively.

Mr. Sheppard: That is to the seventh question?

Mr. Morrison: Yes.

Mr. Bell: What happened to the other percentages?

Ms. Morrison: They did not respond to this question.

Mr. Sheppard: You should have another line down there: "(c) 0.1 per cent, no answer."

Mr. Bell: Okay. Is there anything else you wish to say about the report?

Ms. Morrison: I would like to say one or two words about the conclusions and recommendations.

As I have said, the first conclusion was a general one, but our investigation did not start out to find out about that question. That conclusion arose as a result of our investigation when we found that we did not have adequate information. The Ombudsman concluded that the information gathering system needed improvement. That was not something we set out to find. We investigated Mr. F's complaint that he could not transfer his licence. The second conclusion and recommendation deal with that part of our investigation.

Mr. Bell: Is it still Dr. Hill's conclusion, in the general sense, that there should be some improvement and procedures established?

Ms. Morrison: Yes.

Mr. Bell: I take it he has chosen not to offer any suggestions as to now and what.

Ms. Morrison: As to how to conduct surveys?

Mr. Bell: No. As to methodologies and improvements in procedures.

Ms. Morrison: That is correct.

Mr. Bell: What is the process? Assume for a moment that the ministry had come back to you and said: "All right, you made a point. Maybe we are a little lax. This is what we propose to do." How are you going to assess whether that complies with the recommendation?

Ms. Morrison: We often have that kind of response from ministries when we make this kind of general recommendation; they say, "Yes, we are going to do it." We follow up on it, down the line, to find out what has been put in place. We do not bring it to this committee if we are satisfied that they are doing what was recommended.

Mr. Hayes: Correct me if I am wrong, but are you questioning the methodology and the database from the ministry because, to your knowledge, they did not take a survey as such but only talked to the administrator of that one hospital; they just made a telephone call, or whatever the case may be, to the administrator of that hospital?

Ms. Morrison: We did not have any information that would lead us to believe that it had up-to-date statistics on which to base this kind of decision.

Mr. Hayes: I have a question on the survey that was handed to us later; it is regarding question 6. It might not have any bearing on the case, but if I read that correctly, is what you are saying that someone with an acute condition could wait as long as someone with a chronic condition? It is question 6 on page 2; you asked, "Do you find a difference in the waiting period for treatment for patients with chronic conditions as compared to those with acute conditions?"

Ms. Morrison: The answer is yes, they do find there is a difference in the waiting period. If they say yes, there is a difference, they mean acute patients get treated more quickly.

Mr. Hayes: But 73 per cent said no; they said there is not much difference in treating an acute patient or a chronic one.

Ms. Morrison: That is correct.

Mr. Hayes: A question was asked earlier by Mr. Shymko, I believe, but I do not think we got an answer on it. How many private physiotherapists are operating now under the Ontario health insurance plan? Was that not asked earlier?

Ms. Morrison: I do not have that information, but I expect the ministry does.

Mr. Hayes: Okay. We can get that from the ministry.

Mr. Bell: If there is nothing as to the report, we can complete the review of the documentation. Page 26 is self-explanatory; it covers the letter from Dr. Hill to the minister on the report.

Ms. Morrison: That is correct.

Mr. Bell: So we can presume that if he had not been advised beforehand, Mr. Elston certainly was advised on or about February 24, or his office was, concerning the Ombudsman's conclusions and recommendations.

Ms. Morrison: That is right.

Mr. Bell: Pages 27 and 28 are the response of the ministry, by Dr. Dyer, not only to 22(3) report but also the 19(3) report. We should not be distracted by the 19(3) report; let us concentrate on the response as it relates to the final report. What do you have to say about that?

Ms. Morrison: At this point, the ministry is maintaining its position that there is adequate service in the area in question and that the transfer of the physiotherapy licence should not be made because it is not an area that is underserved.

Mr. Shynko: The ministry maintains the Belleville area, meaning the Belleville municipality, is adequately served; it is not an underserved area. On the criteria of a municipal area, do they also feel the Millbrook municipality, if there is such an entity--is there a Millbrook municipality as well?

Ms. Morrison: I do not think there is.

Mr. Sheppard: Millbrook is a village of about 500 or 600 people.

Ms. Morrison: It is just outside Peterborough.

Mr. Shynko: I understand the ministry was prepared to consider the transfer of the OHIP billing privileges to Belleville on the condition that the physiotherapy facility in Millbrook be maintained.

Ms. Morrison: No.

Mr. Shynko: That was my understanding from page 20, I believe, where you stated the ministry's position. I quote: "The ministry was prepared to consider a transfer of OHIP billing privileges from Ms. A's physiotherapy facility"--I do not know where Ms. A comes in; I guess the original--

Ms. Morrison: That is right.

Mr. Shynko: --"in Millbrook to Mr. F's facility in Belleville, provided that the facility remained in the Millbrook area...." The ministry's position is stated in the very first point on page 20. The ministry was ready to allow for the transfer of OHIP--

Ms. Morrison: Not to Belleville. That reads badly. It should be, "to Mr. F provided the practice stayed in Millbrook."

Mr. Shynko: It says, "to Mr. F's facility in Belleville."

Ms. Morrison: Yes, but that is incorrect.

Mr. Shynko: That is incorrect?

Mr. Bell: Mr. Shynko, the important point is that the ministry's position throughout has been, "We will permit a transfer of that licence, but you have to stay within the Millbrook area," which does not answer your question, what is the Millbrook area?

Mr. Shynko: Exactly.

Mr. Bell: In fairness, that question should be addressed to Mr. Leneveu and Mr. Reid.

Mr. Shynko: I want to ask the Ombudsman's representatives whether the millbrook area is well served by physiotherapists.

Ms. Morrison: It is in one of the areas that were not identified as underserved by the original committee.

Mr. Shynko: So, as an area, Millbrook is not underserved.

Mr. Epp: In terms of (inaudible), it might be.

Mr. Shynko: Not necessarily, because I recall some member of the committee asking: "If Mr. F moved from Millbrook, would there be enough services? Are there other physiotherapists in the area? Is there another private physiotherapist who would provide care?" I believe the answer was yes.

Ms. Morrison: Yes, it is served by other physiotherapists. I believe there are three licences in that county.

Mr. Shynko: Why force a physiotherapist to remain in Millbrook, which is more than well served, and argue that he cannot go to Belleville, where you have opinion polls, surveys and other things apparently showing it could use the services of a private physiotherapist? My question was, "Is Millbrook well served and are there other physiotherapists there?" Even if he were to pull out, would Millbrook be well served?

Ms. Morrison: Yes. The practice that has the billing privileges attached to it is not operational currently; so it would not affect the level of service if he were to transfer those, unless--

Mr. Shynko: It would not be detrimental at all to the Millbrook area.

Ms. Morrison: No, except that they would not get it back there.

Mr. Shynko: I see. I may be asking the same question. I know the ministry staff wanted to comment on it, unless we are so rigid that we do not allow for a comment from the ministry. Are we that rigid?

Mr. Bell: I think it is going to work better if we finish with the Ombudsman people and then deal once and for all with the ministry.

Mr. Shynko: Could you make a note of that so you could comment on it? At my age, I tend to be senile and I may forget.

Mr. Epp: I have noticed that every time you speak, Mr. Shynko, they have been writing profusely.

Mr. Sheppard: Do you class Hastings county and the city of Belleville as one area in regard to our discussion?

Ms. Morrison: It was one area in the survey by the joint committee.

Mr. Sheppard: Do you realize how far it is from Belleville to Bancroft?

Ms. Morrison: Yes.

Mr. Bell: Let us complete the documents. Pages 29 and 30 are the letter Dr. Hill wrote to the complainant advising him what had happened; that is, that he had issued his report to the ministry. He does not say anything about a special report, but he advises that he is going to forward it to the Premier (Mr. Peterson) pursuant to the act. It is just to keep the record clear.

Mrs. Meslin: He does talk about the special report on page 30.

2:30 p.m.

Mr. Bell: You are right.

Page 31 is the letter of transmittal from Dr. Hill to the Premier pursuant to subsection 22(4), which is a condition precedent to a report to the House and then to this committee.

Pages 32 and 33 are the letter from Dr. Hill to Dr. Dyer and to the minister advising that it has been sent to the Premier pursuant to subsection 22(4). It is a formality to complete the process.

Page 34 is the Premier's letter back to Dr. Hill acknowledging receipt of the report pursuant to section 22(4) and advising of his appreciation that he is being kept involved. The only comment, members, is that this letter is identical to the letter that former Premier Davis wrote in the same circumstance, and I am sure nothing follows from that.

Mr. Shynko: Plus ça change, plus c'est la même chose.

Mr. Bell: It is the same typewriter.

Mr. Philip: Some of us have always said there was no difference between the two old-line parties.

Mr. Bell: I did not intend to open that. Page 35, Ms. Morrison, quickly.

Interjections.

Mr. Chairman: Order, please.

Mr. Bell: For identification purposes, members, page 35 is a document I obtained from Mr. Reid and Mr. LeNeveu last week at a meeting. Ms. Morrison, can you confirm that your office was not aware of those figures at any time prior to the 22(3) report?

Ms. Morrison: That is correct.

Mr. Bell: This is referable to the Belleville General Hospital, members, and I believe for the fiscal years listed, although Mr. LeNeveu and Mr. Reid can confirm that. It sets forth the number of outpatient visits at the physiotherapy facility at that hospital and the number of staff employed to service those visits. I will have some questions, and I am sure you will, of the ministry representatives as to what they mean.

Mr. Shynko: To formulate questions on page 35 and that statistic, I want to understand what this means. For example, when for the period 1985-86 we mention a forecast of 21,000 plus, that is quite a jump. Is that forecast based on population growth in the Belleville area, or is it based on some epidemic that requires physiotherapy? Are there grounds for this forecast? It is a plain forecast based on some criteria; correct?

Mr. Philip: There were five new hockey clubs formed in the area; that is what the forecast is based on.

Mr. Shynko: Regarding the full-time equivalent, is this the actual staff, or is it what you normally would require as the equivalent of full-time staff if you had these outpatients--

Mr. Bell: No.

Mr. Shynko: Is it a fact?

Mr. Bell: Staff is actual. The first four years are actual. The 1985-86 figure is a forecast made by the person who put these together at the time they were put together. The actual for the fiscal year 1985-86 is not available as yet.

As for the factors or the criteria in making the forecast, I do not know specifically, but I am not sure it is relevant what they are. At best, it is an educated guess by the ministry, and we should accept that estimate or forecast as reasonably accurate in the circumstances.

Mr. Shynko: So the 10.5 staff is actual; that is not a forecast?

Mr. Bell: Yes.

Mr. Shynko: That is all I wanted to know.

Mr. Bell: I did a little mathematics, if you want to note this. For the 1981-82 year, it works out to 2,828.71 visits per staff member. The figure for 1985-86, based on 21,000, is dead on 2,000 visits per staff member.

Mr. Shynko: You cannot make that comparison, because one is a fact and the other is a forecast.

Mr. Bell: I think you can do something with it. If you want to, you can also play around with 1984-85, which is a figure of less than 2,000.

Mr. Shynko: What I see is that in 1984-85 you have less than what you had in 1981 and you have 2.5 more staff. In four years, you have a decrease of almost 1,000 in terms of outpatient visits.

Mr. Bell: As to what it means, I think we can engage the ministry people.

Ms. Morrison, just to get rid of you, so to speak, we have already looked at pages 36 through 42, the survey and the results of the survey. With one exception, that completes the documentation. I believe Todd Decker has distributed individual copies of the grey-covered report, which contains the ministry's version of the synopsis. As I said, this is at two places. The special report is not numbered, so I cannot--

Ms. Morrison: It is the last five pages.

Mr. Bell: The last five pages in the grey volume or as separately photocopied.

Mr. Philip: All those letters dated March 19 from Allan Dyer.

Mr. Bell: I have two questions, Ms. Morrison. When did your office receive this and do you have any comments on it?

Ms. Morrison: This came to us by letter dated March 19, 1986, the letter just before the synopsis.

Mr. Philip: When did you receive it?

Ms. Morrison: March 20.

Mr. Bell: Do you have any comments on it?

Ms. Morrison: No, not at this point.

Mr. Bell: Why?

Ms. Morrison: I would like to hear the ministry explain its position before I comment on it.

Mr. Bell: That is fair.

Mr. Epp: Is there a policy of stamping your letters with the date?

Ms. Morrison: Yes, we do. This one did not get stamped. The envelope is stamped, but this letter is not.

Mr. Bell: In his letter, Dr. Dyer invited Dr. Hill to contact him if there were any comments that required further explanation or elaboration. Do I take it that no further explanation or elaboration is required?

Ms. Morrison: I am informed by Mrs. Van Kleef that there was a discussion about having a meeting on this before this committee meeting.

Mr. Bell: And time ran out.

Ms. Morrison: I think the ministry decided it was not worth while.

Mr. Bell: If there are no further questions of the Ombudsman's representatives, I think it is timely to ask Mr. LeNeveu and Mr. Reid to set forth the ministry's position with certain reasons. Then you can ask them, as will I, certain questions that have been put already and others that you think are relevant. No further questions?

Gentlemen, whoever wishes to take the microphone and with whatever documents you would like to refer to, can we hear what the ministry's response is to the Ombudsman's recommendations and the reasons for that response?

Mr. LeNeveu: Before commenting on the case itself, I would like to try to answer a number of questions for information asked by the committee.

There was a question in the morning about how many private physiotherapy clinics there are in Ontario. There are approximately 95. There are 95 clinic licences in existence. The point of information I was going to add just a few moments ago was that three are inactive, one of which is this particular clinic, the one that was referred to a few moments ago. At the time when I was going to add the information that it was inactive, it was pointed out that the licence, in fact, is inactive.

2:40 p.m.

Mr. Shynko: The 95 do not have the privilege of OHIP billing.

Mr. LeNeveu: Yes, they do. There are 95 clinics that have the privilege to bill OHIP directly.

Mr. Shynko: These are the ones that were frozen in 1966?

Mr. LeNeveu: That is correct.

Mr. Shynko: None of the 95 is post 1966 bargaining?

Mr. LeNeveu: No. I believe those 95 are inactive.

Mr. Shynko: This is considered as one of the three inactive?

Mr. LeNeveu: That is right.

Mr. Shynko: My other question, and I could not get the figure on this, is how many private physiotherapy clinics have you had since 1966 which do not have the privilege of OHIP billing?

Mr. LeNeveu: I am not sure how many private physiotherapy clinics are currently operating in Ontario without an OHIP licence to bill. Going from memory, there are at least 30, and perhaps more, currently operating in Ontario. Unfortunately, I could not find the information when I went back to my office. The Ontario Physiotherapy Association would have that information.

Mr. Shynko: One of these was the gentleman in Belleville, the physiotherapist who had a private physiotherapy clinic in Belleville prior to purchasing that other licence. Is that right?

Mr. LeNeveu: It is my impression that he is operating a private physiotherapy clinic in Belleville.

Mr. Shynko: Before that?

Mr. LeNeveu: I am not sure when it came into existence. I believe he is operating it today.

Mr. Shynko: The figure is approximately 30 in the province?

Mr. LeNeveu: I do not know. It is at least 30. I could not find the figures.

Mr. Shynko: Can one obtain such information?

Mr. LeNeveu: I believe the updated information would be available to you from the Ontario Physiotherapy Association. We could ask them on your behalf if you like.

Mr. Shynko: Does the physiotherapy association represent both categories?

Mr. LeNeveu: Yes.

Mr. Philip: There is a body of thought in various jurisdictions that says an operating authority which belongs to the government, since it is conferred by the government, may not be transferred or sold no matter how much goodwill, or whatever that is, if it is inactive. I take it that there is no such regulation you can point to with regard to physiotherapy clinics. Is that correct?

Mr. LeNeveu: No, sir, I am not aware of any regulation to that effect.

Mr. Morin: Did Mr. F make any application to you to obtain a licence prior to the one of February 8, 1980?

Mr. LeNeveu: I phoned the OHIP operations in Kingston at lunchtime. It is their impression that the first application goes back to 1980. We could not find any correspondence in the ministry. At that point, it is my understanding that he had asked for a new physiotherapy licence to be granted, not for a transfer of the licence. It was our impression that April 1983 was the first time he asked for the transfer of the inactive licence, which is different from asking for a new licence.

Mr. Cordiano: Can I get a clarification? Did you say the first time he asked for the transfer was in 1983?

Mr. LeNeveu: No. In 1980, he asked for a licence. In 1983, he asked for a transfer of the existing licence.

Mr. Shynko: That comes through as 1983 only. That is why there has been a lot of confusion. Is that correct according to the Ombudsman? I was led to believe that the application was in 1980. By application, I thought it was application for a transfer.

Ms. Morrison: He was applying in 1980 for billing privileges.

Mr. Shynko: Billing privileges, not necessarily transfer?

Ms. Morrison: Not necessarily transfer.

Mr. LeNeveu: They have been frozen since 1966.

Mr. Shynko: What is the logic of someone in 1980 applying for billing privileges 17 years after a freeze was installed? Did this guy not have enough information to know not to apply for a billing privilege as a private physiotherapist because none is issued?

Mr. LeNeveu: We still get requests from individual physiotherapists, even to this day.

Mr. Shynko: Oh, you do get requests.

Mr. LeNeveu: We still receive them.

Mr. Philip: Did he not make an offer to purchase this prior to 1983?

Mr. LeNeveu: My only information is a letter he wrote to one of the persons in the ministry. Perhaps I could read it.

Mr. Bell: That question should be directed to everybody concerned because it does make some difference. It makes a lot of difference when you look at page 35, because if the application for the transfer is prior to the first fiscal year, the implications one can draw from the increase in staff, I would suggest, are materially different than if the application was first made in the third fiscal year.

Ms. Morrison: Or in the second fiscal year. The application was in 1983.

Mr. Bell: The information in the ministry's synopsis, which I have not heard any disagreement with, is that the application was in May 1983.

Ms. Morrison: That is the second fiscal year you are talking about on your chart.

Mr. Bell: When is the fiscal year-end? I thought it ended on March 31.

Ms. Morrison: If that is a fiscal year. I think they were going to tell us what those years are.

Mr. Cordiano: Perhaps the ministry could comment on what the fiscal year is as indicated in the figures.

Mr. Reid: The fiscal year begins April 1 and ends March 31.

Mr. LeNeveu: Again, I apologize; we do not have a date stamp on this letter.

Mr. Reid: Yes, we do. It is at the top.

Mr. LeNeveu: Yes, we do. We received it on April 5, but the letter is dated March 24, 1983. According to the date stamp, the ministry received the letter on April 5, 1983, and acknowledged the letter on April 13, 1983. We formally acknowledged receipt of the letter in May 1983. We then indicated we would not be in a position to make the transfer.

Mr. Cordiano: The letter with regard to the application was in reference to the 1982-83 fiscal year. That is the year you had figures for. You would not have had figures for the following fiscal year. You received the letter in May and at some time subsequent to that someone made a decision based on 1982-83 fiscal year figures. That is just to clarify that.

Mr. LeNeveu: The factual data that would have been available on volumes of service related to the year 1982-83; that is correct.

We have tried to touch on the points of factual information. I believe there was one other question relating to home care earlier this morning. I have forgotten the phraseology of the question. Perhaps I can answer that question, then give a bit of preamble and background to the case.

Mr. Morin: That was Mr. Sheppard's question.

Mr. Epp: Perhaps we can save that until he comes, since he was the one who asked it. He may have a question on it.

Mr. LeNeveu: Fine.

Mr. Philip: I have a question that was not answered. I am concerned that perhaps it may well be that when he applied for an operating authority or whatever you call it, he may not have known the difference between a transfer and applying for a new authority. If his offer to purchase was back in 1980, what he was doing under a different name was applying for a transfer. You people should have picked that up and advised him of the difference and of his rights to apply for the transfer. It was essentially a transfer he was asking for; he simply applied in the wrong way.

Mr. Cordiano: You should not presume that. That should be a question that should be posed.

Mr. Philip: Why else would you buy a business which is not operating unless you are buying the operating authority in that business? It has no value other than the operating authority. There is no reason for him to purchase something he is simply going to move lock, stock and barrel.

Mr. LeNeveu: According to the records we have in the ministry, I cannot answer when he may have approached the owner of the other licence. As far as we can determine from our records, we do not have any information to that effect. This does not answer your question, but there is a sentence in the letter that came to the ministry, which reads, "I have agreed to purchase this licence on July 1, 1983." I do not know whether they had negotiated that six months, a year or two years before. We cannot find that information.

2:50 p.m.

Mr. Philip: Where does it follow that it was in 1980 that he had--

Mr. LeNeveu: I believe he applied for a new licence in 1980. At least that is my impression.

Ms. Morrison: The year 1980 was the date of the first documentation the complainant gave us about his request for billing privileges. You cannot tell from that letter whether he was applying for billing privileges attached to Ms. A's clinic. I know he did not make the actual arrangements with her until he had gone through this process and had come to our office. He did not sign the agreement because he was trying to find out whether he could get the billing privileges.

Mr. Philip: When is the tentative agreement to purchase what amounts to an operating authority if he gets the transfer?

Ms. Morrison: 1984.

Mr. Philip: What he had done then was apply for a new licence. When he was turned down, he decided to purchase a nonoperating authority and transfer it.

Ms. Morrison: I am sorry; I do not know that.

Mr. McLean: Why did he go to the Ombudsman when he did not know whether he would get a licence or not?

Mr. Epp: I am a little confused here. I am sure I am the only one out for my clarification, when you are talking about a new licence and so forth, there is a certain terminology that is used here. As I understand it, there were X number of licences granted in the 1960s for physiotherapists to bill OHIP. Is that correct? Do we know how many licences, Mr. Reid?

Mr. Reid: Approximately 95.

Mr. Epp: That number is fixed. Is that correct?

Mr. Reid: That is correct.

Mr. Epp: If people want to retire or move, for whatever reason, they can sell those licences to another physiotherapist who does not have billing privileges. They buy those on the open market and then ask, either before or after, to have them transferred, or they can use them in those particular areas. When they get those licences, does their transfer to others have to be approved by the ministry?

Mr. Reid: Yes.

Mr. Epp: They do, to make sure that the persons are qualified. When Mr. Philip is asking about a new licence, I do not understand what he means by that. I thought they were old licences which were transferred. They are not new licences and you people are not granting new licences.

Mr. Reid: I go back almost 15 years on this issue. We closed the plan in approximately 1966. No new licences were issued. The existing congeries of licences was frozen. Five years later, I was a member of a committee that met once a month to review applications for people who wanted new, what we call pristine, licences. They did not exist in 1966.

Mr. Epp: Additional licences to the 95?

Mr. Reid: They would all get a letter, similar to the February 8, 1980, letter, saying, "Thank you for your interest but the answer is no."

Mr. Philip: You needed a committee to do that?

Mr. Reid: Yes. We did have a fair volume. That is not surprising even though--

Mr. Philip: You are not by any chance the hangman, who was also paid for five years.

Mr. Bell: Mr. Reid is a lot of things, but he is not a hangman. Forgive me, members, we have to clear up this chronology.

Mr. Epp: I was just trying to get clarification for myself, particularly with respect to the licence.

Mr. Shynko: I am not getting the clarification yet from the answers. The freeze was on the 95, on the numbers. The freeze was not on the individual nor on the area.

Mr. Reid: It was on all.

Mr. Shynko: You did not freeze the areas? You allowed for area changes? The freeze was 95 for Ontario?

Mr. Reid: That is correct.

Mr. Shynko: Is that my understanding?

Mr. LeNeveu: To amplify it, there was a freeze on 95.

Mr. Shynko: For Ontario.

Mr. LeNeveu: For Ontario. There were transfers within a given municipality from one owner to another when a physiotherapist retired or there was a similar circumstance. However, as far as we can determine, there has not been a transfer of one of those licences from one municipality to another municipality. It certainly has not happened in the past six or seven years. We cannot go back in the records, unfortunately, further than that, but there has not been a transfer. However, as the letter states, we would entertain a transfer to an underserviced area. There have not been transfers. Effectively, your answer is correct.

Mr. Shynko: You surely admit that prior to 1966 when you froze the numbers, there was already a discrepancy in the concentrations of clinics. They were applying for physiotherapy clinics prior to 1966, licences were granted and sometimes there would be concentrations in some parts of the province, in some municipalities, and nothing existing in others. There was that imbalance and that anomaly. When you froze the number at 95, I am sure you allowed for flexibility, for changes from one individual to another and from one area to another. You came out with 16 underserviced areas in 1981 for recommendation.

Mr. LeNeveu: All I can say is, I cannot comment on the situation in 1966. That was in the days of the Ontario Hospital Services Commission. There was a freeze. It is my understanding that one of the major concerns that led to the freeze was a number of hospitals were starting to lose key physiotherapy staff. Therefore, the inpatient and outpatient physiotherapy services could start to be seriously affected.

It might be helpful to touch on the study to which Mr. Shynko alluded and on some of the background leading up to that study. As Mr. Reid has said, each year there is still quite a number of physiotherapists applying for licences even though there is certainly an awareness in the physiotherapy community that there has been a freeze since 1966. There are applications still being made.

When the committee was set up, with the Ontario Physiotherapy Association on the committee, there were also representatives from the ministry who looked at--and this goes to your point--the distribution of physiotherapy services across Ontario. At that time, there was a number of

concerns. There was some unevenness across Ontario, and we were aware of that, particularly in northern Ontario.

When you think of physiotherapy services, you should think about inpatient physiotherapy services in hospitals, outpatient physiotherapy services, home care physiotherapy services which subdivide into acute and chronic, and physiotherapy clinics. There are physiotherapists who work in special facilities as well, even in nursing homes.

There was a survey done of the distribution of physiotherapy services in total across Ontario, not just outpatient. The conclusion that came out of this study was that there was a number of areas of the province--the figure 16 was mentioned--that, relatively speaking to other areas, had a lesser availability of physiotherapy services.

The Ontario Physiotherapy Association is on record as saying that it would like to see billing privileges extended to individual physiotherapists. Since it was part of this committee, there was also a recommendation in the report that the ministry entertain removing the freeze and consider issuing additional physiotherapy licences, at least in the 16 geographic areas that had been identified. This would have meant a major change in policy since the policy had been in existence since 1966.

This report was received by the ministry and was reviewed within the ministry. I was present at some of those discussions when it was looked at within the ministry after it came from the committee. The point made earlier by some representatives who basically alluded to it, this was another committee report. I do not like to say "another report", but the ministry does receive a tremendous number of reports. This was a very important report and a lot of good work had gone into it. A good assessment had been made across the province as to the relative state of the level and the quality of services available at that time; at least of the level of service. The report really did not make a judgement call in terms of quality.

The ministry looked at that situation. The ministry, at any time, with any health service, is faced with limited financial resources, but was able to obtain additional financial support. I have mentioned the figure; \$800,000 was obtained. There was a careful analysis as to the relative need of one place versus another. The paper touches on the exact amounts of money that were placed in the Hastings county area for various communities. Within the envelope of money available, a certain sum of money was made available to Hastings county and to Belleville.

The ministry at that time preferred the strengthening--and that is the basis for that phrase--of hospital-based services, distinct from private physiotherapy clinics. That had been the policy since 1966.

3 p.m.

I would like to digress for a moment because at the same time there was another development going on which was hard to assess but it was happening, and that touches on the question of home care. As you are aware, the province had been in the process over these years of introducing active treatment or home care. One of the services that is available through home care is physiotherapy. The active treatment home care program is extremely important and it becomes one of the complexities in all of this. If you can provide home care physiotherapy services, that also relieves some of the pressure on acute care beds. You can take an individual who has had a stroke and may be

receiving physiotherapy services in the hospital and move him to a home setting, and you can have a physiotherapist visit him there during this period.

In any event, the province, as a matter of policy over the last decade or so, has introduced physiotherapy services for active care across the province. It has also recently completed, and is in the process of introducing chronic home care physiotherapy services in Metropolitan Toronto. Again, these can be administered a number of ways.

In the Hastings area, the service is administered by the general hospital. That is not normally the way home care services are delivered. Home care services are normally delivered through the public health units. That is the common practice across Ontario. The public health unit will engage in various kinds of arrangements with physiotherapists with regard to reimbursement.

Let us talk about a public health unit. The Ministry of Health will provide a global budget public health unit. They, in turn, may hire a physiotherapist, or they may reimburse them on a sessional basis, or they may reimburse them, in a limited number of cases, on a fee-for-service basis, which is basically the way the province now reimburses the individual physiotherapy clinic. I believe the current rate is \$8.85 per physiotherapy visit.

So home care was coming into being and the impact on that is hard to measure, because as we approve the home care services in an area, it takes some pressure off the physiotherapy department in a hospital in two ways. One, the patient may go out earlier and require less physiotherapy service and, two, the patient may no longer come to the out-patient department of a hospital because the patient probably is not in very good shape in any event, having maybe been recently discharged, and it is preferable for the patient's own care to have home care physiotherapy service. So this change was going on.

All these things were all being studied internally within the Ministry of Health and there was a decision that this \$800,000 would be made available. It was a significant sum of money and it resulted in a significant improvement in physiotherapy services in these designated areas, as identified by this committee.

A decision was made that the moneys would be made available to the hospitals with respect to strengthening, for the most part, the out-patient departments of the hospitals. However, there is a reference to the hospital having been given this global amount of money in the letter from Mr. Norton, and it was touched on today when one of the committee members said the hospital did not necessarily have to turn around and hire a physiotherapist as a staff person. The hospital could have made an arrangement to engage a physiotherapy clinic to offer services for out-patient department patients. That was their privilege, but the money was given to the hospitals and the vast bulk of them decided to use the money to strengthen their own physiotherapy departments.

During the time this discussion was going on within the ministry, in 1983, we were aware that additional moneys would be available. We had information from the 1980 survey about the fact that physiotherapy services in Belleville were lower than norm. As reflected in those statistical figures provided, each year we know the level of out-patient/in-patient activity going on in individual hospitals.

By the way, I might answer the question. The 21,000 is what we call a 93 forecast, as I recall, going from memory. When we talked to the hospital, it was the actual number of visits up to December 31, and based on that trend line, the forecasts for January, February and March. It is relatively accurate, but it may not be precise.

In any event, we have this information available to us. As a matter of existing policy, we intended to strengthen the out-patient departments of a number of hospitals, giving the hospitals the flexibility they have always had to make whatever arrangements they wished locally. They could contract for the service or they could hire staff to provide the service. That is the privilege of the individual hospital.

The other point being discussed, and it is a difficult question to answer, is the two-week waiting period. Is two weeks too long to wait? The only answer I can give is it is not an uncommon occurrence in Ontario to have a two-week waiting period. It is not necessarily a supply-demand situation because one of the problems you run into is that the individual, with good reason, may say, "I would prefer to come on Wednesday," or "I would prefer to come after 4:30 p.m. because I am back to work now and I have wrenched my wrist," or whatever it happens to be and he or she is obviously in a physiotherapy department. It is a problem with private clinics as well. There are periods when the public would prefer to come--before work, at noon hour, after work, and so forth. Sometimes those types of accommodations are difficult to address.

Mr. Chairman: I have three names on the list; Messrs. Baetz, McLean and Morrison, and now Mr. Shynko.

Mr. Baetz: In the course of your presentation, you have answered two of the bigger questions I had. The final one relates to your study or your assessment of the need in Belleville. What it really boils down to is the ministry's contention that, with comparison to other communities, the needs are met. You disagree with the Ombudsman's assessment that the needs are not being met and that your way of measuring these needs is not adequate. Is this the basic point of controversy?

Mr. LeNevue: Mr. Baetz, it is a very difficult question to answer because in 1982-83, the ministry was looking at the data coming from the study of 1980, which was sort of a province-wide snapshot. In the spring of 1985, the Ombudsman conducted a study and talked to practitioners in the area. I understand they talked to all the doctors in Hastings county, although I am not sure. I cannot comment on this because the doctors of Hastings county cover a bigger geographic area than the doctors in the Belleville community. I do not know what the results of the survey would have been if one had looked at the Belleville practising physicians as distinct from the Trenton practising physicians. In turn, we are in touch with the hospitals.

If you look at the statistics we show on page 35, the only thing one can conclude is a variation. In 1981-82, there were 19,800 out-patient visits. In 1982-83, the year we were contemplating increasing the staff, we were looking at 1981-82 data. I am conjecturing now, because I do not honestly recall, but it would likely have been that data, the work we did in 1980-81. In 1982-83, there was a tremendous drop of 15 per cent to 16,247 in out-patient services. In turn, the next year, 1983-84, it went up to 19,000. In 1984-85, it dropped to 18,256. In 1986-86, it went up to 21,000.

The staff has gone up from seven to 10 which, if you go into a

mathematics study, you would say is a 50 per cent increase in staff over that period, yet the visits in 1981-82 and 1985-86 are not that far apart. This is difficult to look at because you would have to also go in and analyse what was happening in the in-patient department, such as the severity of the cases which is a difficult thing to do.

3:10 p.m.

One of the things that was done by the hospital in the latter part of 1985-86, as we understand it, is that the physiotherapy department was authorized to hire a part-time person because in the earlier part of the year the work load was higher than they had anticipated. They had a backlog and I do not know whether the dates did or did not coincide with the survey. I cannot answer that question.

However, by coincidence, there was a backlog building up. In the latter part of the year, I believe in the early fall, the hospital authorized the physiotherapy department to bring on additional staff to deal with the work load situation. All I am saying is the numbers vary over time, which makes it very difficult to make a judgement as to whether the services are appropriate. By the time you have the data, what is actually happening today may be different than what you are looking at in the data. The thing that cannot be measured is complexity.

I presume the introduction of the home care program for physiotherapy services during this time took some of the load off the hospital. It should have had some impact. It may have removed some of the more complex cases for the hospital, those who could not come to the hospital. There are a whole series of elements that are very difficult to know.

Mr. Reid would be pleased to elaborate--I am going to set you up, Randy--because he is much more familiar than I am with the area of individual hospital budgets. There are continuously varying pressures within a hospital to which the hospital has to respond. We made a deliberate policy decision within the ministry to make a major infusion into individual hospitals and direct it into the physiotherapy departments to strengthen them based on this survey. Over and beyond that, hospitals over time are getting increases in their global budgets, some of which will be directed to physiotherapy departments. They may be occupational therapy departments or emergency departments. This is a continuing process which ebbs and flows over time based on a number of factors. There is no question that physiotherapy will be in greater demand in the years ahead, because we have an ageing population, and as people get older, they tend to require more physiotherapy, particularly chronic physiotherapy.

The figures also indicate how variable it can be at any point. This is one of the advantages with the global budget technique in a hospital setting. They can respond to work load needs in the physiotherapy department or some other department.

Something that might be added which is important is that a physiotherapy clinic licence is not a licence to hire one individual. There are some physiotherapy clinics in this province that have 20 or 30 staff. If a licence is transferred--this goes back to one of the earlier questions about cost--there is an added cost to the Ministry of Health. The licence as it now stands is costing us zero, because it is inactive in the community to which it is assigned. If this licence comes to the community of Belleville, it will start to engage staff. It does not necessarily mean it is going to engage one,

two or three staff persons. It is a clinic licence. The current policy is there are no staffing limitations on it. Therefore, there could be additional costs in that sense.

Mr. Philip: Surely, if a person in one town does not go to the inactive licensee, he goes to someone else who simply works an extra X number of hours to accommodate the overflow. It will not make one cent's worth of difference to the number of OHIP claims. It simply means that the physiotherapists who exist in that town are going to make more money, because they are taking the overflow from the dormant licensee.

Mr. LeNeveu: Mr. Reid wants to answer your question, sir.

Mr. Reid: Your question would be conceptually correct if everyone were on the same payment basis. In simplest terms, we have 10 physiotherapists on salary at Belleville General Hospital. If they do 20,000 visits this year, their salary is X. If they do 15,000 visits, there are still going to be 10 of them, they are still going to draw salaries and the rest of the visits will go to the private clinic. There will be a duplication, because we have already paid enough to have all of that work done in the hospital. That is where the payment costs come in.

Mr. Philip: Is there any indication then that the cost per visit is considerably less if the visit is by a staff physiotherapist than if it is by a private physiotherapist?

Mr. Reid: You have to measure it in slightly different terms. Most hospitals--I think the vast majority--need a physiotherapy department. You have to have a physiotherapist to service your inpatient requirements, so you measure only the incremental cost of how much more you need to service outpatients. On that basis, it is probably a "pick em."

Mr. Baetz: I have a further supplementary to my question. Going back to your methodology, is the way in which you have assessed the needs in Belleville essentially identical to the methodology you apply right across the board in Ontario? Is there something so unusual about your assessment of the Belleville situation that it should draw the Ombudsman's attention, or are your methods of evaluation the same all over?

Mr. Reid: Are you referring to 1980?

Mr. Baetz: I go back to page 24, where the Ombudsman says:

"Therefore, I conclude that;

"1. The Ministry of Health has unreasonably omitted to: (1) improve its methodology and database for the routine assessment of outpatient physiotherapy service adequacy; (2) establish procedures for continuing needs review; or (3) develop an appropriate evaluation and feedback mechanism to assess outpatient physiotherapy needs."

These are three rather stern observations that the Ombudsman levels at your ministry. He is, in effect, saying you have omitted to follow a proper evaluation procedure.

Is Belleville an aberration? Have you failed, in his assessment, to do this only in Belleville, or are you applying the same methodology in Belleville as you do all over the rest of the province? The reason I am asking

is, if you are weak in Belleville, if you agree you are weak or everybody agrees you are weak, then you are weak across the province and the Ombudsman is not going to stop with you in Belleville. He is going to be at you in every other place. Is there a breakdown in my logic here someplace?

Mr. Reid: With all due respect, Dr. Hill will have to defend his own conclusions.

Mr. Baetz: Yes. How about your defending yours?

Mr. Reid: The Ministry of Health undertook, along with the Ontario Physiotherapy Association, a comprehensive analysis of the physiotherapy services in Ontario from which a number of recommendations were made to the government, not all of which were accepted. However, the group identified those areas of the province that were underserved and the ministry responded with an \$800,000 allocation of special funds to meet the needs of those underserved areas. That was done in 1983-84.

Mr. Cordiano: The crucial question with regard to this situation is, did you respond after the fact? Did you respond with new policy initiatives to increase staff at the Belleville General Hospital after a request was made by Mr. F, or was it done prior to that? That is the crucial question.

Mr. Morin: What triggered the whole thing?

Mr. Reid: Mr. F's request did not trigger the allocation of funds to Hastings county.

Mr. Cordiano: I am sure it did not.

Mr. Reid: It was identified as one of the areas that required--

Interjection.

Mr. Cordiano: That is not what I am saying here. I am simply saying you may have intended to do that anyway, but with reference to the policy of allowing a transfer to an underserved area, what is an underserved area at a certain time?

Mr. McLean: That is not a supplementary to the previous question.

Mr. Cordiano: Yes it is.

Mr. McLean: Put your name on the list if you want to ask a question.

Mr. Cordiano: Then we should not allow any more supplementaries because we are going to be arguing until we are blue in the face about what is a supplementary.

Mr. Baetz: This is my final supplementary. You are saying, or your ministry--I will avoid personalizing this--you are convinced that your ministry's method of evaluating these needs applies across the province and is satisfactory, that it is an adequate way to go about it and that your methodology is sound; in fact, conversely, maybe you would question the Ombudsman's survey methods as well.

That is my final supplementary, but I would like to get at the point. In your opinion--and your opinion may not be right--how do you feel about this?

3:20 p.m.

Mr. Reid: I have to be careful how I phrase this. The Ombudsman's survey was an interesting exercise in consumer satisfaction, I suppose, except that the consumers were not asked, nor were the providers asked, now the Ombudsman made the quantum leap to declare Belleville to be underserved without ever assessing waiting lists, without ever talking to patients or talking to the providers of the service. I do not know.

Mr. Baetz: That is a useful answer.

Mr. Cordiano: Could I get an answer to my question?

Mr. Chairman: Mr. Baetz has the floor. Take your time.

Mr. Baetz: I asked my final supplementary.

Mr. Cordiano: With all due respect, I did not get an answer to my question.

Mr. Sheppard: I asked a supplementary before he did.

Mr. Shynko: It is typical of the Liberal government; you do not get answers.

Mr. Morin: Yuri, please.

Mr. Chairman: Order please.

Mr. Sheppard: I had a supplementary.

Mr. Cordiano: Can I get an answer to my supplementary?

Mr. LeNeveu: I am guided by whichever question he wishes to answer.

Mr. Reid: Can I clarify the question?

Mr. LeNeveu: Yes.

Mr. Reid: Are you asking when we made the decision?

Mr. Cordiano: I am saying that a decision obviously was made in the fiscal 1983-84 period to increase staff from eight to 9.5 at Belleville General Hospital. That was an increase from the previous fiscal year.

Obviously the crucial point of the issue is, with respect to an underserved area, a transfer from another area to that underserved area would be considered within the context of what is an underserved area. If there were eight staff members in 1982-83, you are going from eight to 9.5 in 1983-84. If 1982-83 is the year that we are talking about for consideration to qualify as an underserved area, then that is my question. What is an underserved area with respect to a transfer? It seems to me that if you qualify that as an underserved area, the committee's recommendation was that it was an underserved area.

Mr. LeNeveu: It is difficult to answer the question. As I tried to illustrate earlier, in the period leading up to 1983-84, the report had been received and was under consideration within the ministry. I do not think it

would be inappropriate to say that decisions had been taken that additional moneys would be made available in the 1983-84 year, but that process is a matter of preparing budgets and so forth.

By the way, it would become public knowledge to the Ontario Physiotherapy Association and individual members of physiotherapy that the Trenton area may well be designated underserved. By coincidence, on April 5 of that fiscal year, after we had been deliberating on that report and after we came to conclusions that we would put additional moneys in, we received this application for a transfer. I do not want to say anything more than.

Before we were aware of this application for a transfer of licence, there had been internal discussions that there would be a strengthening of physiotherapy services. Our preference was to stay within the existing policy, which was to strengthen the outpatient departments of hospitals because there is an intrinsic value and advantage to the government in that, in the sense that there is a global budget control and on a given day the outpatient department may be busy or, in turn, the inpatient department may be busy and you can take those staff resources and allocate them based on relative need.

Mr. Cordiano: I am trying to get to the bottom of this. You have a policy on the one hand that allows for a transfer to an underserved area; on the other you are trying to alleviate the problems that the underserved area is facing by increasing staff via the public route, as I stated earlier. Does everyone know the ground rules when you are doing that? Someone is going from an area that is overserved, getting transferred to an underserved area and then that area is no longer considered underserved. That is the point here: the timing of it, and whether that area is still considered underserved at the time the request is made.

Mr. LeNeveu: You are introducing a new element in your question. The physiotherapy licence for Millbrook was inactive. I cannot comment on Peterborough county, in that geographic area. Obviously, since the licence was not being used in Millbrook, in all probability the people of Millbrook would go to the city of Peterborough to get physiotherapy services because of the relatively short distance.

Peterborough versus Hastings county at that time is difficult to assess. Apparently at that point, based on the survey that was done, the services in Hastings were considered to be at a lower level than Peterborough. Over time, it will vary. Perhaps today Peterborough county may be considered to be in greater need. I am trying to show that the statistics and the demand factors vary over time. It is hard to answer that element.

Mr. Bell: If members permit me some questions, a lot of these areas will be cleaned up.

I want to get back to the chronology of a number of things. Mr. LeNeveu, we heard about the study in 1980 and 1981, the recommendations and the determination that, of the 16 areas, Belleville was included as one of the underserved; correct? You are nodding, yes.

Mr. LeNeveu: Correct.

Mr. Bell: Can you confirm that when the results of the study were reviewed by your ministry, a decision was made for the Belleville area to staff it up?

Mr. LeNeveu: Yes. By the way, if I may comment, it is a small point but it has been overlooked. The conclusion of the study was that the Belleville area was short 0.5 man-years, half a man-year. That is something else to keep in mind.

Mr. Bell: Thank you for bringing that to our attention. It is significant, because we must presume, with reference to page 35, that although the study identified the service as short 0.5, in the subsequent period of time, you staffed up 3.5 when the relative number of outpatient visits has remained constant. Correct?

Mr. LeNeveu: Yes. That is the way I would interpret it.

Mr. Bell: I do not know what we take from that. It could be that somebody within the ministry agreed with the general conclusion of underservicing, but disagreed with the numbers necessary to staff up. I invite you to comment on that.

Mr. Reid: It may also reflect a local decision on the part of the hospital to dedicate some additional resources of its own into the physiotherapy department.

Mr. Bell: Do we know what it was in this case?

Mr. Reid: No.

Mr. LeNeveu: As far as we are aware, we gave them the figures that were mentioned. The answer is that the dollars we reported in those letters were additional to their global budget. As far as I am aware, we have not made any additional decisions to add money for the outpatient department.

Mr. Bell: But for whatever reason, between fiscal 1981-82 and fiscal 1985-86, decisions were made that it was necessary to increase the staff by the numbers we see on the page.

Mr. LeNeveu: Correct.

Mr. Bell: I am not sure whether we are going to be able to pin down today when and what this man applied for commencing in 1980 through 1983. One thing we know for sure, prior to July 1983--and I think we can accept your record--probably some time at the end of March or beginning of April 1983, he made an application to have the Millbrook licence transferred. Correct?

Mr. LeNeveu: That is the first time we were aware that he wished to make that arrangement.

Mr. Bell: He was told then, and the Ombudsman has been told consistently since, that (a) we would be happy to approve the transfer if you leave the licence within the Millbrook area. Correct?

Mr. LeNeveu: Correct.

Mr. Bell: And (b) our policy respecting transfers out of the area will be initiated only upon demonstration of the need of the area where you are seeking to have the transfer made. Correct?

Mr. LeNeveu: Correct.

3:30 p.m.

Mr. Bell: In the context of that timing, from May 1983 to March 1986, when you prepared your final position, the staffing of the hospital has increased by either 2.5 or one. Correct? All right.

It was possible--no, I had better not put it to you that way because you will not agree with it. Will you confirm that the result of the increase in the hospital physiotherapy staff was made pursuant to your ministry's policy that any increase in physiotherapy services in any area of Ontario, particularly in this area, would be in the public health care sector?

Mr. LeNeveu: That has been the policy since 1966 and that was the basis on which we added the money in 1983-84. In my earlier remarks, I commented that we allow the hospital to make whatever arrangement it so desires. If it wished to take the global budget amounts given to the hospital and, rather than adding staff to the public hospital system, arrange privately for some alternative, bringing in somebody on a consulting basis, a per diem basis or whatever, that would be the hospital's decision.

Mr. Bell: As long as the hospital paid for it.

Mr. LeNeveu: Yes, but it was given \$78,000. It could have made a number of decisions. It opted to increase the hospital staff.

Mr. Bell: That is just consistent with the flexibility inherent in hospital budgets.

Mr. LeNeveu: The global budget, yes.

Mr. Bell: That has nothing to do with your policy of private versus public.

Mr. LeNeveu: Which is to strengthen the public hospital outpatient departments, yes.

Mr. Bell: All right. You may have answered this already. From the moment this gentleman first applied for the transfer until the present, you have increased the number of physiotherapists in that area by whatever the numbers we have looked at.

Mr. LeNeveu: Yes.

Mr. Bell: That is against the background of your response to him that, "We will transfer a billing licence only when need is demonstrated." Correct?

My last question is, how do you reconcile those two positions; i.e., an increase in staffing of physiotherapists in the area against a response to the applicant that, "We will not approve a transfer unless you can demonstrate need"? Implicit in that answer must be, "There is no need demonstrated."

Mr. LeNeveu: Two questions are implicitly asked in your statement. There is a question of whether an area requires additional outpatient or community physiotherapy, which is an end in itself. Then there is a question of which means will be followed to address that. Do you address that need by increasing the outpatient department of the hospital, which we had already internally come to the conclusion that we would do, or do you do it by transferring a licence, which is a means?

Mr. Bell: I like your questions better. I suggest the answer to your first question is, "Yes, there is a need for more physiotherapists."

Mr. LeNeveu: Yes.

Mr. Bell: I suggest to you the answer to your second question is, "We are going to provide for that need through the public sector."

Mr. LeNeveu: Through the public hospital global budget system; the public sector, yes.

Mr. Bell: My really final question is, why did you not tell that guy that from the beginning? Why did the ministry advise him there was a policy for transfer upon demonstration of need when it appears the ministry never intended to satisfy the need in that way?

Mr. LeNeveu: In connection with your question, it is interesting that the dates become rather relevant in this. The Ontario Physiotherapy Association assisted us in the survey. It became common knowledge within the physiotherapy community that Trenton would likely be designated as an area, although no public announcement had been made about the decision on additional funding.

On May 11, 1983, the ministry wrote to Mr. F, stating merely that we would not approve the transfer to the individual in question.

Mr. Bell: Did you give him a reason?

Mr. LeNeveu: No. It is true the ministry had a policy it would permit transfers. However, it had not happened. As far as we can determine, since 1980 it definitely has not happened. It may have happened between 1966 and 1980. We cannot find in our records any indication of a transfer of licence subsequent to 1980, but there was an internal practice that we would transfer to an underserved area if a situation came up.

There are only three inactive licences; so it is relatively improbable the circumstance could arise. Among the licences in the Toronto area, of which there are several, there are transfers of ownership going on, but the new owners prefer to keep the licence in Toronto, partially because an established practice is in existence.

Mr. Bell: That is all well and good. The fact of the matter is you are not aware of any circumstance wherein there has been a transfer at least as far back as records are kept, as we have heard in answer to one of the members' questions.

Second, with respect, it is not an in-house policy, because you described that policy to, first, the applicant and now, second, the Ombudsman as the reason for not approving it.

Mr. LeNeveu: The applicant obviously contacted the Ombudsman subsequent to May. In the fall, the Ombudsman made an inquiry and we stated what the total policy was. There was also correspondence from the applicant to the ministry asking for a clarification on this very same point; so in the fall we made that point clear. However, as I am trying to indicate, we had also made a decision in 1982-83 to strengthen the outpatient department of the hospital and had provided the moneys in 1983-84.

Mr. Bell: May I suggest something for comment? I suggest there are no circumstances that could exist whereby you would exercise your discretion to transfer an OHIP billing licence into any other location in the province.

Mr. LeNeveu: There are a number of places where a hospital has a physiotherapy department, but it may not have an outpatient physiotherapy department. It may have only an inpatient one. As a case in point, Peterborough has an inpatient hospital physiotherapy department; it does not have an outpatient department.

Mr. Bell: Are you saying that if an application were received to transfer an OHIP billing licence from outside the Peterborough area, as yet undefined, to the Peterborough area, it would be approved?

Mr. LeNeveu: The ministry would have to look at the circumstances. Again, our preference would be to strengthen the hospital physiotherapy department. Therefore, it might be feasible for us to add additional resources to the physiotherapy department, which would allow it to set up an outpatient physiotherapy service. On the other hand, it may be physically impossible to do that because of space constraints or whatever it happened to be. In answer to your question, it could happen but it has not.

Mr. Bell: To yours and Mr. Reid's knowledge, it has not happened.

Mr. LeNeveu: No. We have checked back to 1980. Prior to that, we cannot certify it has not happened.

3:40 p.m.

Mr. Bell: I have one last question. Looking at page 35, are you able to help us determine when the Belleville area changed from being underserved to being adequately serviced?

We all agree it was underserved in 1981-82 and there has been a movement to the 10.5 staff as it currently exists. The ministry has gone on record with its position. As far as the ministry is concerned, are you able to tell us when it became adequately serviced?

Mr. LeNeveu: In 1982-83, the outpatient work load had diminished and the staffing had increased. In all probability, the department was able to cope in 1982-83, but again that is just looking at the numbers before you. In 1983-84, the additional moneys were put in place, which again allowed the hospital to increase its staff relatively significantly. We put in improved services in adjacent communities as well, which have been referred to. That should have made the area relatively well serviced. Again, it is extremely difficult to draw conclusions.

We have been in touch with the hospital since that time. That was in 1985. We also got in touch with the hospital when we received the Ombudsman's report, because we were not aware that the Ombudsman was conducting a survey with the doctors in the area. We have been in touch with the hospital again and its view is that the waiting list with the additional staff we are putting in in the fall is currently reasonable.

The hospital will be making an 1986-87 submission to us for its global budget. It will be talking and making representations on the part of all the departments where it feels there may be an anticipated work load problem. It currently feels that it is adequately staffed and the waiting list is not

unreasonable in 1985-86, but it may well foresee demands and make representations to the ministry for additional funding for 1986-87. It is too early to tell yet. The budgeting process is just beginning for 1986-87.

Mr. Bell: I do not have any other questions.

Mr. Chairman: I have the following list of members: McLean, Shynko, Hayes, Philip, Sheppard, Morin, Epp and Cordiano. Is that everybody?

Interjections.

Mr. Chairman: I said the following members. We will keep the best for last.

Mr. McLean: Mr. F now has an active facility in Belleville without billing privileges?

Mr. LeNeveu: He has a facility there. I do not know the extent of the practice.

Mr. McLean: My understanding is there are no billing privileges. Who is paying him? Are the patients paying direct? How is he getting paid for what he is doing?

Mr. LeNeveu: He may well have an arrangement for injured workers with the Workers' Compensation Board. He may well have an arrangement to be reimbursed by the patients. There could be third-party insurance plans. There could be innumerable arrangements. He may also be doing some work on a consulting basis for some facility in the area. I do not know.

Mr. McLean: You say it would generate additional costs for the ministry to approve the transfer of billing privileges from the inactive facility at Millbrook to an active facility in Belleville. What would those costs be?

Mr. LeNeveu: It would depend on the volume of business that would be generated. It is hard to estimate what it would be. At present, the Millbrook licence is inactive. The physiotherapy services are being provided in Peterborough, either through the hospital or through the clinic in Peterborough. If the clinic went into operation--a typical physiotherapist can do 5,000 or 6,000 visits a year, if the demand is there, times \$8.85--one is into something in the magnitude of \$50,000 that would be paid in solid revenue.

Mr. McLean: what you are saying is if the licensee requests--

Mr. LeNeveu: I cannot answer your question now.

Mr. McLean: --he would take it away from what the hospital staff is doing. That is probably what would happen.

Mr. LeNeveu: It might reduce the hospital load. Then the hospital would have to decide whether to reduce staff because of reduced demand. It leads to a whole series of questions. It is hard to answer that question.

Mr. McLean: That will probably answer my other question. You said there are implications that the Ombudsman's recommendations would cost extra money. That is where the same thing would come in.

Mr. Shynko: I looked at the first letter on page 6, which gives the impression that very high expectations were given to Mr. F in the reply from the program advisory.

First, apparently the man had been operating as a private physiotherapist for a number of years. He was feeling the crunch, so he decided to request OHIP billing privileges and wrote this letter, as I am sure a number may have written. The answer was: "As a matter of fact, we are holding discussions with your federations to look for a mutually acceptable policy for funding private physiotherapy services. We cannot do anything until the discussions are completed. The report will be there. We suggest we keep your application and you reapply again." It gives the very positive impression that things are happening there. "Just hold on; we are holding discussions." I am not saying you were holding a carrot out to this guy with some positive statement that the funding policy would be there, but it is at least very positive.

Apparently, the report, which is a set of recommendations to the ministry, was issued in June 1981. I am sure he was aware of it because his federation was involved in it. He must have read it, got the impression there is an underserved area in Hastings county and started looking for a place he could get or purchase a licence and transfer it to Belleville. On the assumption of that report and the expectations given, he decided this was the way to do it.

Did the ministry perceive this guy as trying to play it smart? "We will show him. He is setting a precedent others may want to follow. We in the ministry are not as dumb as some people think. There is no way he will circumvent us. We have decided these recommendations are fine, but (a) we will not proceed with more private clinics, and (b) we will try to do it through the outpatient area, which is the policy." Is this simply a way of trying not to set some kind of precedent because there may be others doing the same thing? You have mentioned the money aspect. Is it more than that? Is there an aspect of its setting a criterion or precedent?

Mr. LeNeveu: The report raised the question of whether private physiotherapy clinics could be a means of meeting the underserved area demands that have been identified with respect to the 16 communities. The decision was to continue with the policy that has been in force since 1966, to continue to meet community demands through strengthening outpatient departments in hospitals. As I said earlier, those decisions were pretty well taken within the ministry prior to receiving his request at the lowest levels in the ministry on April 5 for a transfer licence from Millbrook. As a matter of policy, I think we would still wish to go the route of strengthening the hospital physiotherapy department system.

Mr. Shynko: Was he the only, lonely physiotherapist making such an application or request or were there many?

Mr. LeNeveu: We have had and continue to get many requests.

Mr. Shynko: Could you mention how many you had in 1980, for example, prior to the joint discussions?

Mr. LeNeveu: I cannot go back to 1980, but I can tell you about 1985-86. The ministry still gets at least a dozen to 15 to 20 a year from physiotherapists asking for licences. It is a continuing issue. There is a significant demand.

Mr. Shynko: Is your answer always the same, "Unless it is an underserviced area, you guys have no chance?"

Mr. LeNeveu: Basically, the letter is along that line, that the policy was adopted in 1966, is still in place and so forth.

Mr. Shynko: What is your definition of an underserviced area? Is it a municipal or county area?

Mr. LeNeveu: You would have to give me a geographic location. It is difficult to answer that question.

Mr. Shynko: Here it says Hastings county is an underserviced area. You say it is not because the the municipality of Belleville is not an underserviced area. What is your definition of area--municipal or county boundaries?

Mr. LeNeveu: We look at the services within the county. In the process of doing that, we have to assess the services that are there. There are services in Trenton, Belleville and so forth. I tried to indicate that when you look at Peterborough, the hospital has an inpatient but not an outpatient service. There is a whole series of extenuating circumstances we would have to take into consideration.

3:50 p.m.

Mr. Shynko: In other words, you are not dogmatic. The Ombudsman is right in saying there is confusion in the definition of areas. This man is certainly confused. He read the joint report that said Hastings county is underserviced, and your reply is that it may well be but the Belleville municipality as an area is not underserviced.

Mr. LeNeveu: No. We came to the conclusion that additional resources were needed in the area. We gave additional resources to the Belleville General Hospital in 1983-84.

Mr. Shynko: The definition of an underserviced area, the immediate area, is still a vague notion, is it not? Maybe we could get two opinions. Maybe it is the same. I am sure there is a solidarity of opinion and I am not trying to ask whether there is a diversion or more flexibility in what I have just heard.

Mr. Reid: We measure by counties. There are certain geographic realities. For an analogy, I will move away from Hastings county and back to my home, Renfrew county, a very large county. If you look at the communities within Renfrew, there are three separate worlds within a county. When we measure the health care needs in Renfrew county, we have to look at the three towns because it is night and day between Barry's Bay, Pembroke and Renfrew. There are too many miles between them. You cannot measure a county exclusively.

We have the same thing here in southern Ontario with Halton, where Burlington is at one end and Oakville and Georgetown are at the other. We do not take our slide-rules out and automatically say the whole of Hastings county is or is not underserviced. We look within it.

The study that was done in 1980 pinpointed two very small communities. Madoc is not a big community. We pinpointed that as an area where a satellite

clinic should be operated out of Belleville and that is what happened. Bancroft is a very small community affiliated with Belleville because Belleville now runs the Red Cross hospital. That was pinpointed.

Mr. Shynko: It makes a lot of sense. A resident of Millbrook is not going to travel to Belleville to a physiotherapy clinic once a week or however often he may require it. I think your definition is correct. By immediate area, one would think of a municipal area, but the Ombudsman quotes areas, and this man has been misled to believe that the county criteria are applicable to him since Belleville is in the county of Hastings, not in the county of York.

I am sure the Ombudsman's office has realized that there is a discrepancy. Maybe they should take a look, take a poll and survey the actual service within Belleville, and come up with a conclusion that it may not have been as effective in 1983 as it is today in 1986.

I want to ask you about the flexibility that is suggested, that a hospital can make an arrangement with a private physiotherapist who may have problems surviving by suggesting, "We will make you in charge of an outpatient service." Is it my understanding that he then becomes an employee of the hospital?

Mr. Reid: Not necessarily. We will again use Hastings. If the Belleville Hospital had decided that it would be easier to contract with a physiotherapist--I will leave off the "private"--to provide a part-time clinic in Madoc, then that is a route it could have gone. The physiotherapist would not necessarily be an employee of the hospital but could be operating under a contract arrangement, the way pathologists do for example. They are not considered employees of the hospital but they provide their services.

Mr. Shynko: You could have suggested to Mr. F in 1980 or 1981--maybe it would have made sense in 1983--that since you had seven people doing the outpatient service of physiotherapy in 1981, according to page 35, then it went up to eight, to nine and a half, and now to 10 1/2. Mr. F could have been one, could he not? He could have been approached by the Belleville hospital saying: "Here is an option. We will contract this out. You provide the outpatient service and you can still carry your private practice on the side." Can they do that?

Interjection: No.

Mr. Shynko: Was this option ever discussed? Since you were planning to expand the outpatient services anyway, could you not have included this man?

Mr. Reid: That option was left open to the hospitals.

Mr. Shynko: It was not up to the ministry.

Mr. Reid: We do not negotiate individual service contracts.

Mr. Shynko: However, the hospital could have done this. Has he never inquired about that with the ministry?

Mr. Reid: Not as far as I am aware.

Mr. Shynko: The other question I had may be a little more universal than the specifics of the case. Are there any other licensed health services that fit into this category of purchasing a licence? I am thinking of private

labs, for example, or even a private doctors' clinic. There may be two or three doctors who want to open a private clinic, though obviously they are all doctors, but with labs, for example, do you have something similar to the physiotherapists or is this a unique situation with them?

Mr. Reid: No. We have literally the same situation with private laboratories.

Mr. Shynko: Are private laboratories exactly the same? For example, would you have an underserviced area criterion so that one could purchase the licence of some lab in Oshawa and set it up in Acton, Ontario?

Mr. Reid: The criteria for lab licence transfers are set out in the act. There is a public interest criterion which includes supply.

Mr. Shynko: Basically, it is similar to this. We may have to look at similar licensed health services such as labs to resolve this matter, but my further question is about the commission report. Mr. Baetz has indicated it may set a precedent with regard to other ministries. That commission report was apparently just a report of a series of recommendations. Did it carry any weight?

Mr. Reid: Mr. Baetz was referring to the Ombudsman's survey, as opposed to the joint commission report.

Mr. Shynko: That is true. However, this report is not policy; it is just a report with a set of recommendations. You have made a policy of one aspect of the recommendations, namely, underserviced areas, have you not?

Mr. Reid: No. We commissioned the report to provide us with some advice. Not all of the recommendations were acceptable in forming long-term policy, but we accepted part of the advice with respect to designating about 16 areas of the province for special funding to provide additional physiotherapy resources.

Mr. Shynko: The recommendation was for \$500,000 for Belleville and you only gave it \$78,000. Is that my understanding of 0.5?

Mr. Reid: No. The recommendation was 0.5 of a person.

Mr. Shynko: I think of the estimates as the 0.5 figures. I am sorry. Was the recommendation regarding moneys pretty well similar to what you implemented as a ministry?

Mr. Reid: To the best of my knowledge, it was.

Mr. Shynko: Then you implemented not only the criterion of underserviced areas, you accepted the number as a policy. The ministry took the definition of 16 underserviced areas in this province and said, "We recognize that and we will, as a policy, do our best so that these underserviced areas become serviced." Am I correct in assuming that?

4 p.m.

Mr. Reid: We did not start defining underserviced areas. There were geographic portions of the province where there was a view that the services could use an enhancement and we tried to respond within the financial resources we had available in those areas.

Mr. Shynko: I go back to drawing a parallel with doctors. Your argument is that if we start to open private physiotherapy clinics in a municipality or region, the number of private clinics will immediately result in a volume of customers. Increased volume means increased OHIP payments. Is that not the logic? Apparently, the Office of the Ombudsman questions it. You will be dealing basically with the same volume and you will be making it more effective. Instead of someone waiting two or four weeks for an appointment as in the past, the service will be much more efficient. Do you question that?

Mr. Reid: Yes. Health is supply-side driven, not demand-side. Increasing the supply of health care facilities of any type will increase the volume.

Mr. Shynko: Is it the same for doctors? I imagine the more doctors we have, the more volume we have.

Mr. Reid: The growth in the number of physicians has outpaced the growth of population.

Mr. Philip: Is it not also true that there is research to show that health services, if delayed, cost considerably more later down the line? Arguments have been made by health care researchers that for every day a person waits for elective surgery, the longer is his stay in the hospital likely to be, and therefore the larger the cost to the taxpayers. Would one not assume that there would be additional cost to the taxpayers, not just by a delay in health care service in receiving physiotherapy services so that it takes more and longer treatments to get the person well, but also by other hidden costs such as additional workers' compensation benefits, insurance benefits or other costs through society as a result of the length of time the person sits watching television and drinking beer with his leg up, the leg he managed to hurt four and a half weeks ago, but for which he could not get any treatment?

Mr. Reid: I cannot subscribe to your generalization that all waiting lists create additional health care costs. There have been research studies that show this is not the case. In general terms, yes, in some cases physiotherapy should be received quickly. One makes an assumption that, as in all health care services, the physicians stream patients among emergent, urgent and elective, and deal with those cases as quickly as they possibly can.

Mr. Shynko: You are not prejudiced against private physiotherapy clinics. You are simply saying that the minute they get the privilege of OHIP billing they become public and the public purse cannot support it any more. Is that right?

Mr. Reid: It is partly that.

Mr. Shynko: You are really prejudiced against the public system. You would like to see privatization that would save the ministry money. Is that right?

Mr. Reid: No, I will not go that far.

Mr. Shynko: You are not prejudiced against public physiotherapy clinics.

Mr. Reid: No, sir, I am not.

Mr. Shynko: The question is money once they become publicly, totally subsidized and provide accessibility and efficiency.

Mr. Reid: Hopefully.

Mr. Shynko: I still do not understand that he has been advised by the ministry that provided the facility does not relocate outside Millbrook, one could transfer the billing privileges. Can you describe what that means? Can he bill patients?

Mr. Reid: In its simplest terms, if he will reopen the clinic in Millbrook he has the licence.

Mr. Shynko: You can bill your patients in Belleville through OHIP.

Mr. Reid: No.

Mr. Shynko: That is what I understood.

Mr. Reid: That is the Ombudsman's version.

Mr. Shynko: That is the Ombudsman's version.

Mr. Reid: What we have said to Mr. F is that we would countenance the purchase of the licence in Millbrook if it stays there to service the patients in Millbrook and Peterborough. It has nothing to do with the operation in Belleville at all.

Mr. Shynko: It is private now and it would continue to be private.

Mr. Reid: If he could convince all his patients to drive from Belleville to Millbrook, I suppose he would service them.

Mr. Philip: How do you know he is operating two offices?

Mr. Hayes: I would like a clarification. When we first started these proceedings, it was my understanding that the reason Mr. F did not get his licence transfer was that the area he wanted to transfer to was not underserved. At the same time, your own statistics show the area in Belleville was underserved from 1982 to 1985. It seems to contradict the reasons for turning him down. Is it because you wanted to let the hospitals do all the co-ordinating of the services for physiotherapists?

Mr. LeNeveu: We have tried to indicate that the research study that was done in relation to the 1980-81 period was an indication that certain areas of the province could usefully use additional physiotherapy resources. By the time the ministry had reviewed it in 1982-83, internal decisions were being taken to accept those recommendations, and between 1983 and 1984 significant additional adjustments were made in the budget.

In our view, based on the statistical information available between 1982-83 and 1983-84, we tried to indicate that the services in that area were probably adequate, as we also did in 1984-85. Indications from the hospital are that in 1985-86 the services are also reasonably adequate with waiting lists in the order of two weeks.

Mr. Hayes: You are really saying that services were adequate after the hospital added to its staff while, at the same time, Mr. F was applying for a transfer.

Mr. LeNeveu: Yes. It has been our policy to try to improve services in the hospital system across Ontario as and when the needs are identified.

Mr. Hayes: The point I am trying to make is that at one point the service is adequate while, in the same period, it is not adequate in hospitals, but when it comes to a person applying it is adequate service.

Mr. LeNeveu: I am not sure an underserviced area and service being adequate-- we are using those terminologies as interchangeable.

Mr. Hayes: We are talking about Belleville right now.

Mr. LeNeveu: The study indicated that half a man-year could usefully be added to the Belleville area. It does not necessarily say that you should open up and grant a private physiotherapy licence in the area, which would add at least a man-year of labour, a person-year of labour.

I am not sure how one gets that precision into it, but the ministry did decide to strengthen the resources in the hospital system, and it has been reflected in the statistical data which shows there has been an increase in the staffing resource available in the hospitals. For a long time, the policy has been to try to strengthen the physiotherapy services through the hospital system.

Mr. Hayes: Then as far as the application is concerned, it had nothing to do with the service.

Mr. LeNeveu: Coincident with the policy review that is going on, an application was received to transfer a licence from Millbrook. Similarly, we likely received other applications in underserviced areas for new licences. We continue to receive applications for new licences for private physiotherapy clinics, but as a matter of policy since 1966, the ministry has been trying to strengthen the physiotherapy service through the hospital system.

Mr. Chairman: Mr. Hayes, are you finished?

Mr. Hayes: That is all.

4:10 p.m.

Mr. Philip: I have a couple of supplementaries. What I do not understand is this. Your policy, as I understand it, is that it has been generally known since 1966 by all the physiotherapists--even though a few, through misinformation, may still apply--that they could not get any private operating authorities but that transfers could be provided and applied for and applications could be made to purchase dormant or soon-to-be-dormant licences and take over existing private practices. Is that correct?

Mr. LeNeveu: They were aware that we would approve transfer of licences within the same municipality. I do not know whether they were aware or not of the point about transferring to an underserviced area. As I say, we had not been faced with a situation, certainly not since 1980, for a transfer of a licence to an underserviced area.

Mr. Philip: On what date is the policy taken that you are going to go the public route rather than the private route--in other words, that you would discriminate, and I use the word "discriminate"--that you would favour expanding the public sector through an increase in the number of

physiotherapists at hospitals rather than by simply increasing in some way the private physiotherapists?

Mr. LeNeveu: My understanding of the history is that in 1964 the Ontario Hospital Services Commission, which was then a separate entity, for a short period of time approved the physiotherapy clinics. In 1966, the practice of establishing physiotherapy clinics ceased, and basically there has been a freeze on private physiotherapy clinics since that time.

Mr. Philip: You said, though, that there was a policy of favouring the public versus the private, and yet you had in force a system of transfers; that it was possible to apply for a transfer and it was also possible to get a dormant licence and activate it.

Mr. LeNeveu: I am trying to distinguish. There were 95 licences in existence, and the ownership of those licences may change over time. That did not increase the number of licences; it merely changed the ownership.

Mr. Philip: But you also said it was policy that you could transfer after having purchased one. We get further testimony in which you say it was the government's policy to go through the hospital route. At what point did you ever either advise the association or advise this man who was applying that he would not get a transfer because you had a public policy now of going through the hospitals rather than through private physiotherapy clinics?

Here is this guy applying for something and you are going along with him, and now you are saying that the justification was that you had a policy against it, a policy saying that you were going to put the money instead into the public sector. Surely the reasonable thing would have been that if you had that policy, you would have made the public announcement. You should be able to point to a date, a document that would have been sent out to this man that said, "I am terribly sorry but you stand no chance, because it is our policy to put the money into expanding the physiotherapy at hospitals and not go the private route."

Whether it is a good policy or not is not relevant to our discussion. What is relevant is, was there a policy, was the policy public and was this guy advised of the policy? Otherwise, you are just sucking him in. He is applying for something he is not going to get for some reason he does not know.

Mr. LeNeveu: I believe there is an understanding that the policy has been a freeze on increasing the number of private physiotherapy clinics.

Mr. Philip: Nobody disputes that. That is not my question.

Mr. LeNeveu: Therefore, that leads to your second question. Was there a policy permitting the transfer of licences to underserved areas? As I have tried to indicate, the ministry would entertain that if there were an underserved area. It becomes difficult to define what an area is because of the different service levels across the province. There had never been a request to transfer a licence since 1980. It was the ministry's view that with an enhancement of the hospital system, this particular area, Belleville, would not be underserved.

Mr. Philip: Why could he not have been told that?

Mr. LeNeveu: In the first correspondence with him in the spring of 1983, we wrote to him and said we would not entertain the transfer.

Subsequently, as I understand it, he contacted the Ombudsman and asked--

Mr. Philip: What were your reasons in that letter for not entertaining the transfer? You did not give him any.

Mr. LeNeveu: No. None was given.

Mr. Philip: If it were policy to expand the public sector, surely it would have been reasonable to have told this man at the time, "I am sorry, but we have a policy, and it is the policy of the minister at this time to expand the public sector." This man could have accepted that as government policy and not have wasted his time by applying further. You did not tell him that. He went the route because you did not state to him what the policy was.

Mr. LeNeveu: You are correct that the letter turned down his application. I am of the view the physiotherapy community was well aware of the policy since 1966. However, the letter that was written by a person at the OHIP office did not include the reference you have stated.

Mr. Philip: If that was generally known by the physiotherapy community, can you provide us with any letter or correspondence to the Ontario Physiotherapy Association spelling out that policy?

Mr. LeNeveu: I believe we could.

Mr. Morin: You said the association was aware of the arrangements to fund the Belleville General Hospital. Is that correct?

Mr. LeNeveu: Because it was a participant in the study, the association would have been aware that Hastings county had been designated as underserved. At the time this information was shared with it, the physiotherapy association would have preferred that the government change its existing policy and issue additional private physiotherapy licences in the 16 areas. However, the decision was taken at the time that the policy of not issuing additional licences would continue, but that additional moneys would be made available to strengthen the services in those geographic areas.

Mr. Morin: Was any representation made to you by the association on behalf of Mr. F?

Mr. LeNeveu: I am not aware of any representation made on behalf of the individual in question. There have certainly been continuing representations by the association over the years to have the existing policy changed. That comes up at least once or twice a year with the association.

Mr. Morin: Was Mr. F aware that there was no possibility of transferring the licence from Millbrook to an area that was known to be underserved, but in which you were planning to correct the problem?

Mr. LeNeveu: I am not aware of what the gentleman knew. The policy was common knowledge within the physiotherapy community, but I am not aware of what he may have known.

Mr. Philip: I am still somewhat confused about your policy.

Mr. Snyko: Mr. Philip, will you allow me a supplementary question?

Mr. Philip: As long as it is not a long one with five or six parts to it.

4:20 p.m.

Mr. Shynko: It is a very simple one. Since 1960, there have been 95 clinics that have billing privileges. How many are in Metro?

Mr. McLean: How many are not would be simpler.

Mr. LeNeveu: Do you mean all of Metropolitan Toronto?

Mr. Shynko: Yes, Scarborough, Etobicoke, North York, in other words, the two-million population of Metro.

Mr. LeNeveu: Randomly counting it up, I have some figures that do not answer your question precisely but may be of some help. In communities with a population of 250,000 or more, which would include five municipalities, Mississauga, London, Hamilton, Ottawa-Carleton and Toronto, there are 57 clinics. For communities of 100,000 to 250,000, there are 10 clinics. Basically, there are eight municipalities and 10 clinics. For 60,000 to 100,000, there are nine clinics in nine municipalities.

Mr. Shynko: What is the population of Belleville?

Mr. LeNeveu: It is about 35,000. There are about 55 municipalities in Ontario in the magnitude of 10,000 to 60,000, and about 12 clinics. There are many communities in that population range that do not have a private physiotherapy clinic.

Mr. Shynko: Do you have a figure?

Mr. Reid: There are 40.

Mr. Shynko: That is very disproportionate to the population. It should be about 20 minimum to 25 maximum, when you look at the population of Ontario which is more than nine million. That is very disproportionate in terms of the population of Metropolitan Toronto. There is obviously a concentration, an overserved area, following the 1966 freeze. In the ministry's policy, is there any attempt to rectify that imbalance and maybe allow for a private clinic to serve the Belleville municipal region?

Mr. LeNeveu: The point we have been trying to make is that the outpatient demand in Belleville is around 20,000 visits per year. A private physiotherapist could do 4,000 to 6,000 visits in a year. In the smaller communities, it may well be that one facility, preferably in a hospital setting because there are inpatients and outpatients to be responded to, could well meet the total demands of the area. Carrying it to the extreme, if you have a community of 1,000 people, it would make no sense to have a physiotherapy department in a hospital and set up a private one. It would not happen, because the global budget would support the hospital situation but the private physiotherapist could not financially survive.

Mr. Shynko: The other option may be to go through the public solution.

Mr. LeNeveu: No. It was our view that a marginal half man-year resource addition would have met the needs in Belleville. Over the time, more than that has been added.

Mr. Shynko: As a business calculation, your decision was the right one.

Mr. LeNeveu: It was right for the needs of the community, in our view. There was a service there. It was understood by the doctors. It had been in existence for some time. It served both inpatients and outpatients of the area.

Mr. Philip: I am really pleased I granted you that one supplementary, Mr. Shynko. Mr. LeNeveu, at the time you wrote the letter of December 21, 1983, telling Mr. F you would grant him the operating authority if he operated in the Millbrook area, can you run by me again what research you had that indicated a need for additional physiotherapy services there?

Mr. LeNeveu: Do you mean back in the 1960s?

Mr. Philip: On December 21, 1983.

Mr. LeNeveu: The licence is inactive in Millbrook. There is no service there.

Mr. Philip: If it becomes active, you will have an extra physiotherapist in Millbrook. I am asking you what evidence you have to support the need for an extra physiotherapist there.

Mr. LeNeveu: In my judgement, if the licence became active, the community being 600 in immediate population, there would not be sufficient demand to sustain a clinic. However, if one became active in and around Millbrook, there might be patients coming from the Peterborough area, which is only five or six miles away.

Mr. Philip: You really had no evidence to support, on a need basis, an additional physiotherapist operating in Millbrook at all when you told him that he could activate this dormant licence.

Mr. LeNeveu: There was a licence that had been issued in that community going back many years. It had been inactive for a long period of time. That licence still exists legally.

Mr. Philip: Because of a technicality--the technicality being that the licence existed--whether there was a need for him to operate or whether there was adequate work in that community, you were going to grant him the operating authority; but in an area where there seems to have been some research indicating there was a need, you were not willing to give him the transfer from Millbrook over to the area where there was a need. Does that not strike you as blatantly absurd?

Mr. LeNeveu: The licence is inactive in Millbrook. The needs identified in 1980 were for additional physiotherapy services. The ministry made the decision to continue with this policy to strengthen the service in the hospital, and it did so. I cannot answer your conjectural question about what might or might not happen in Millbrook. At the moment the licence is inactive.

Mr. Philip: But you were prepared to make it active even though you knew--

Mr. LeNeveu: No. It is not a matter of being prepared to make it active. The licence exists; it was granted back in the 1960s. It still exists, but it happens to be inactive.

Mr. Philip: One of the things you might look at from the point of view of policy is to find out whether you should automatically grant, for some technical reason, the activation of dormant licences.

Mr. LeNeveu: That is a separate question.

Mr. Philip: Yes, I realize that. It seems absurd that this guy can find an area where there is some demonstrated need for his services and is not allowed to transfer on authority, but he is allowed to activate an authority in an area where there is no need for his services. It just does not make very much sense to me. I do not think that even the old transport board of a few years ago would have done something like this.

Mr. LeNeveu: The owner of the existing licence has not activated it, for whatever set of reasons, and he wishes to sell that licence to another person. However, the licence is inactive. It is the ministry's view that the preferred route to go is to continue with the existing policy, and that is to strengthen the hospital services in the Belleville area.

Mr. Philip: The problem I have is that it seems to me that the reason you have claimed for denying the authority is not the real reason. The reason you claim for denying the transfer is that there were adequate services in Belleville. But the real reason, I think, is that you had a policy that you did not tell this fellow, a policy that I or the committee members may or may not agree with, which was that you wanted to go the public route rather than the private route. That strikes me as a miscarriage of proper process.

Mr. LeNeveu: I think there have been many instances when that policy of expanding the hospital system, the public system, has been enunciated; it is not something that is not known.

Mr. Philip: If it was enunciated, why did they not put the correct reason in the letter to him instead of giving him this reason, which later you have trouble substantiating, that there were adequate services in Belleville?

Mr. LeNeveu: I think they were trying to differentiate between the services in 1980, which we subsequently strengthened, and this ministry's view that in 1983, 1984, 1985 and 1986 the services, relatively speaking, were adequate in Belleville, although they are provided through the Belleville General Hospital.

Mr. Cordiano: May I ask a supplementary? What is the first instance of any correspondence to that effect to Mr. F from the ministry stating its position? I am not clear about when you indicated to Mr. F the ministry's policy at the time.

4:30 p.m.

Mr. Bell: I do not believe it was ever stated to the gentleman directly. It certainly was stated indirectly to the Ombudsman and thereby, we presume, to be transmitted to him in some way by the Ombudsman's office. We are not aware of any documentation wherein that is set forth, at least to the gentleman directly.

Mr. Cordiano: That would be the letter of December 2, 1983, on page 9. Am I correct?

Interjection: Yes.

Mr. Cordiano: I have not had an opportunity to look at it, but is there any indication in the letter that the ministry's position was such it was now going the public route? In a letter dated July 19, 1983, from the minister of the day to Mr. O'Neil, the member for Quinte, I believe there is some mention of the fact that facilities and services at the hospital would be expanded.

Mr. Reid: Yes.

Mr. Cordiano: That would have been the first indication.

Mr. Reid: It was perhaps the first indication in writing. However, I have to go back and repeat that for 17 years the Ministry of Health approved no additional licences for the private physiotherapy plan. The Ontario Physiotherapy Association and all its members were aware that only 95 of their membership had licences to bill OHIP.

Mr. Cordiano: Yes, but what we are addressing here is the question of the transfer.

Mr. Reid: For 17 years, physiotherapists graduated from school and went to work somewhere. They worked in the public sector because that is where we put the resources.

Mr. Philip: You are skating all around the issue. The issue is not whether the ministry was issuing new authorities but whether there was a policy that said it would not transfer dormant ones. There was no policy that said that, and you failed to convey that to the applicant. You did not say to him, "Our objective is to freeze out, in any way possible, anyone new practising, be it by a new application or by buying out a dormant application and transferring it." It is the transferred one on which you had no clearly stated policy.

Mr. Reid: I do not think the first part of your statement is true. It is not the intent to freeze out the private physiotherapy plan.

Mr. Philip: To freeze out any new ones, I said.

Mr. Reid: There are not any new ones.

Mr. Philip: Because you are not granting them. You are freezing them out. Stop playing word games.

Mr. Reid: No, we are not playing word games. Those who are currently licensed can sell their licences. Some of them have been sold and they continue to do business.

Mr. Philip: This fellow wanted to buy one and would not be allowed to continue to do business with that one unless he operated in a place where there was inadequate business for him, and you would not grant him a transfer to where there was adequate business.

Interjection: That is not entirely true.

Mr. Reid: We dispute that there is a requirement for him to be in Belleville.

Mr. Cordiano: That is the issue there.

Mr. Reid: Yes. If there was any business in Millbrook, the licence would not be inactive.

Mr. Cordiano: What my question attempted to address was, when was there any indication whatsoever that he would not be granted a transfer to Belleville because the preferred policy of the ministry at this time was to expand the public sector facilities?

Mr. Reid: He was advised at some point, and I cannot tell you the date, that we would not--

Mr. Cordiano: The earliest indication we have in our documentation is July 19, 1983.

Mr. Reid: That was not to him; that was to Mr. O'Neil.

Mr. Cordiano: All right. However, we do not have any documentation directly to Mr. F.

Mr. Bell: That is the point.

Mr. Cordiano: We are dealing with correspondence that is indirect. It is to other intermediaries, not to Mr. F.

Mr. Philip: With respect, what I think has happened here is that you denied him on one ground, found your grounds were a little shaky, and then came up with other rationalizations for not giving him the authority.

Mr. Reid: I am sorry. We denied him on the ground that, in our opinion, we do not require a transfer into Belleville. We still maintain that position.

Mr. Shymko: You still allow him to operate in the present facility, and I do not mean Belleville. What is the name of the place?

Mr. Reid: Millbrook.

Mr. Shymko: In Millbrook, although there is no need for it.

Mr. Reid: No, he does not operate in Millbrook.

Mr. Shymko: You would allow him to operate in Millbrook although you know very well that it is overserviced.

Mr. Cordiano: You do not know that.

Mr. Shymko: You will admit that.

Mr. Reid: It is not underserviced.

Mr. Shymko: It is well serviced now even without that clinic.

Mr. Reid: No. I do not think you can say that.

Mr. Shymko: Is it now underserviced without the operation of that clinic, whose licence he bought and which now is suspended?

Mr. Reid: It has not been purchased at this point. He has an offer to purchase. The clinic is inactive. It provides no service.

Mr. Shymko: It is not an underserviced area even with the clinic inactive.

Mr. Reid: I would not think so, but I am not sure.

Mr. Philip: The Ombudsman states that the Ministry of Health must "(1) improve its methodology and database for the routine assessment of outpatient physiotherapy service adequacy; (2) establish procedures for continued needs review; and (3) develop an appropriate evaluation and feedback mechanism to assess outpatient physiotherapy needs."

At the time the original application was made, is it correct that the research you did consisted of calling the hospital?

Mr. Reid: In 1983?

Mr. Philip: Yes.

Mr. Reid: That is not correct.

Mr. Philip: In 1980?

Mr. Reid: No. The study was done by the Ontario Physiotherapy Association and the Ministry of Health across the province.

Mr. Philip: What assurances can you give us that the Ombudsman's recommendation 1 is not needed at the present time? In other words, what kind of methodology and data are you currently collecting to assess adequately the needs for physiotherapy services?

Mr. Reid: We collect utilization and staffing statistics from every hospital in Ontario. We collect statistics from the home care program. We have some from the private physiotherapy clinics that bill OHIP. We know the services that are being rendered across the province and the manpower that is employed in each jurisdiction with the exception of private clinics. I do not think we know the manpower that is employed in any clinic. We can only estimate. We do snapshot vacancy analyses for manpower planning purposes to find out how many physiotherapists are being recruited across the province and how many positions are vacant as of a specific date. That is done on an annual basis in order to judge shortness of supply. It is fair to observe that, generally speaking, physiotherapists are considered in short supply. We are trying to balance a small crop across the province.

Mr. Philip: May I ask for a response from the Ombudsman on that?

Ms. Morrison: The recommendation you refer to was made because during our investigation we zeroed in on the issue that had been raised about whether this was an underserviced area. The information we got from ministry officials, which you will see on page 21 of our report, according to verbal information received from the administrator at the Belleville General Hospital, was there was no delay in obtaining outpatient physiotherapy treatment within the municipality. We did not receive from the ministry any information that would lead us to believe it was taking systematic statistics on which to base its consideration of Mr. F's request.

Mr. Bell: You now know they did, because you have page 35. At least on an annual basis, somebody got some statistics, assessed need and responded to that.

Ms. Morrison: Right, and found a need for at least 3.5 staff members.

Mr. Bell: Mr. Philip's question is, in view of what you now know, what view do you have as to the general recommendation that the ministry should improve its methodology and formulate procedures for assessing?

Ms. Morrison: The ministry could probably satisfy us that it is taking the appropriate statistics and measurements.

Mr. Bell: I think the ministry knew concurrent with the fiscal years what the needs were and responded to those needs. That is for the general recommendation.

Ms. Morrison: Our difficulty is that they did not use whatever information they had in considering Mr. F's request.

Mr. Bell: That is recommendation 2.

4:40 p.m.

Mr. Philip: Would you be comfortable if this committee were to decide to refer recommendation 1 back to you and that the ministry then provide you with an analysis of what systems it is using, and that on recommendation 1 the Ombudsman report back to the committee on whether he is satisfied with the procedures, since there seems to be some confusion as to exactly what is going on? It is not our job here to examine these procedures when we have just seen them for the first time. Rather than come down either in favour of or against recommendation 1, it seems reasonable for the Ministry of Health and the Ombudsman to get back together on item 1.

Ms. Morrison: We would be satisfied with that.

Mr. Reid: As long as the committee recognizes--not wishing to be disparaging at all about the physiotherapy profession--that it is only one of a multitude of professions. If I were to speak on behalf of the minister in terms of order of priorities, physiotherapy would not rank in the top 10 of things to which I would dedicate resources to set standards and to do a major information systems overhaul. We have things such as physicians, nurses, social workers, etc.

Mr. Philip: That is fine, but we at least have to find out what is going on and whether there is an evaluation of it.

Mr. Bell: We might be able to short-circuit that right now. Mr. Reid, are you able to confirm that whatever was done between the ministry and Belleville General Hospital between 1981 and 1982 to get the information on page 35 was done for the other areas and hospitals in Ontario where the need was identified in 1980?

Mr. Reid: I believe it was done for all 16. I have documents that cover Northumberland, Lennox-Addington and Peterborough, which were not considered underserved at that time, at least not all of them were. Yes, we do a survey and it is not simply a telephone call to the administrator.

Mr. Bell: That might assist, and we can ask at some appropriate time that the Office of the Ombudsman comment.

Interjection.

Mr. Bell: It cannot now.

Mr. Reid, speaking on behalf of Mr. LeNeveu as well, is there anything else you wish to add that you think might assist the committee in what it has to do; that is, decide which of the positions is the most adequate and appropriate?

Mr. Reid: The only thing I would add to the issue the committee is trying to resolve about whether Belleville is properly serviced in terms of physiotherapy, is that with all due respect to the survey that was done by the Ombudsman, it is not complete and it is not comparative. The survey that was done by the ministry and Ontario Physiotherapy Association to determine those areas across the province which seemed to be underserved was extensive and it was reacted to by the ministry. If you look in pure isolation at what has happened in the Belleville General Hospital, we have increased the staffing over the time period by 50 per cent. Belleville is not underserved in terms of physiotherapy services.

Mr. Bell: Implicit in what you have said is that when the committee addresses that issue, you intend it to address the issue as at April 1986 and not as at some time in mid-1983?

Mr. Reid: You can address it in either time frame and the answer will still be the same.

Mr. Bell: Your position is it does not matter; the answer would still be that it was not underserved?

Mr. Reid: The physiotherapy service in Belleville is adequate.

Mr. Bell: And it was so in mid-1983? The reason I refer to that time is it appears to be the time that Mr. F made his application to the ministry for the transfer of the Millbrook billing licence.

Mr. Reid: That is correct.

Mr. Cordiano: There is one other thing, if I can just make a final remark. You say there is no limit to the number of physiotherapists who can be employed in a private practice that has OHIP billing privileges.

Mr. Reid: As I understand it, that is correct.

Mr. Cordiano: Someone can set up shop and have 10 staff members.

Mr. Reid: I am not sure of the statistics now because I am a number of steps away from the private physiotherapy plan at this time. However, at one time in the mid-1970s, one private physiotherapy clinic in this province provided more outpatient visits than all of the hospitals in Ontario combined, and it was not in Metro.

Mr. Cordiano: It was certainly a consideration on the part of the ministry, then, that there would be no way of controlling the number of staff members that a private clinic could hire?

Mr. Reid: It is an open-ended system; it is a fee-for-service system. You tick off the box, fill in the 15 dots and send the bill to OHIP.

Mr. Bell: Ms. Morrison and Mrs. Meslin, I do not want to limit you

or cut you off in any way. It is obvious that I am trying to finish the committee's public consideration of this today. If it is not possible, tell me it is not possible and we will have to invite everybody back for some period tomorrow morning. Are you able to make your response in a very short period?

Ms. Morrison: Yes, I think I can. I have a couple of questions relating to the cost, to which perhaps I can get answers.

Did the money that was funnelled into Belleville, as you say, to improve its services in the public sector, go to Belleville itself?

Mr. Reid: It went to the Belleville General Hospital, but it was to set up a satellite clinic in Madoc.

Ms. Morrison: Then it did not go to services in Belleville itself.

Mr. Reid: Some of it would have gone to Belleville and some of it went to Bancroft as well.

Ms. Morrison: Madoc and Bancroft.

Mr. Reid: Madoc and Bancroft.

Ms. Morrison: Was the change in the number of staff from 1982 to 1985 in Belleville?

Mr. Reid: That was at Belleville General Hospital.

Ms. Morrison: That was two and a half staff?

Mr. Reid: Yes.

Ms. Morrison: We would just like to sum up for committee members the reason we are here. We have a complaint from a person who wanted to transfer billing privileges to an area that he thought, from the survey, to be an underserved area. He was told he could not transfer unless it was to an underserved area and he could not understand that contradiction. I think many of the committee members have picked up on the fact that this may not have been the real reason he could not transfer. However, as far as our complaint and our investigation are concerned, when we wrote to the ministry saying, "Mr. F wishes to purchase these billing privileges," the ministry wrote back to us and clearly stated that he could get the privileges if he stayed in Millbrook but that he could not get them if he wanted to transfer them, unless he was transferring them to an underserved area.

We were not provided with information that would allow us to tell whether it was an underserved area. As I noted in the report, the only information we received was that the hospital administrator said there were no delays. I now note from the information the ministry has provided to us here that they had seven people serving approximately the same number of outpatients in 1981-82 as 10.5 people now serve. It appears to me, although the ministry has said that the service was adequate throughout, that the service could not have possibly been of exactly the same adequacy in 1982-83 as it is today, because they have two and a half more people serving approximately the same number of outpatients. Mr. F could have provided the service of one of those two and a half people.

4:50 p.m.

The argument of cost seems to me to be a difficult one. If they allowed him to open it in Millbrook, it would cost them money there--OHIP billing. They argued that there was nobody there to go to physiotherapy, but to put his clinic in a town that does not have any patients does not seem to be a very good way of saving money.

They say if they open it in Belleville, it will cost them money because they will not use the staff in their hospital, but if there is any problem of overuse, surely they would not be adding staff to the hospital.

The other thing about OHIP billing privileges that should be thought about is that someone billing OHIP gets paid only when he works. Although we have some efficiency arguments about supplying physiotherapy services through the hospital--you could have people on staff so that when there were more complaints you could add and when there were fewer complaints it would not matter--the fact is you pay those people all the time. You pay Mr. F only when he actually does the work.

We have never been very convinced of the cost argument, OHIP billing privileges in one practice compared to OHIP billing privileges in another, as long as you are monitoring your hospital services appropriately and you are adding to the staff only as appropriate.

Had we granted this licence in 1982-83, Belleville General Hospital perhaps would not have had to go from eight staff members to 10.5, but they have told us that they have a very good monitoring service. We now feel they have been monitoring these facilities, although we did not get the information during our investigation. If they were monitoring it, it would seem to me, having granted the licence, it would have been easy for them to tell whether they needed the extra staff they ended up adding to the Belleville General Hospital.

The main thrust of the complaint is that here we have someone who was told he could not have something for a particular reason, and when we looked behind the reason, it did not make any sense. I do not think we are asking you to consider at all the ministry's policy on how it provides physiotherapy services. That is not what we came here to talk about. We came here to see whether the ministry's decision with respect to Mr. F was an unreasonable one, as the Ombudsman felt it was.

Mr. Bell: Mr. Chairman, if there is nothing else from any other member, the Ombudsman's office or Mr. Reid, I suggest the committee close its public consideration of this matter, consider its decision in camera some time within the next two days and thereafter report same publicly in an appropriate way.

The committee adjourned at 4:53 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
REPORT, COMPLAINT OF MR. R
WEDNESDAY, APRIL 2, 1986
Morning Sitting



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Substitutions:

Cordiano, J. (Downsview L) for Mr. Henderson

Epp, H. A. (Waterloo North L) for Mr. Newman

Clerk: Decker, T.

Staff:

Bell, J., Legislative Counsel

Witnesses:

From the Ontario Northland Transportation Commission:

Dyment, P. A., General Manager

O'Connell, T., Counsel

Drury, N., Director, Human Resources

From the Office of the Ombudsman:

Meslin, E., Executive Director

Morrison, G., Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, April 2, 1986

The committee met at 10:11 a.m. in committee room 1.

REPORT, COMPLAINT OF MR. R

Mr. Chairman: I call the committee to order. Now that we have your attention, I will call on our counsel, Mr. Bell.

Mr. Bell: Members, placed before you is the background material prepared for the case involving Mr. R. That should be all the material you need to have before you during your consideration of this case.

As you can see, it involves a report that the Ombudsman submitted to the Ontario Northland Transportation Commission. The issue is whether the complainant should be able to contribute, for pension purposes, for the first two years wherein he was employed in some capacity by the commission or its predecessor.

I propose to change the format somewhat today from yesterday. It was necessary to go through all the documentation in yesterday's matter so you would have an understanding and feel for the type of documentation and process that is carried on between the Ombudsman and governmental organizations.

It is not necessary that we do that in this case. If you are interested in following ahead or knowing where we are going, we will probably be able to concentrate on the first eight pages of the material.

First is a synopsis prepared by the Ombudsman. It is on pages 1 to 3. Second is the response, or varied version of a synopsis, prepared and submitted by the commission. It is on pages 4 to 8.

With the time available, it was not possible to have the parties settle on an agreed statement of facts or issues, but I believe each will be relying substantially on these two documents.

The other documents we will probably refer to are the actual reports. They start at page 27 of the material to page 32, inclusive. Finally, the Ombudsman has included some background material, which starts at page 40 and goes to the last page, 51.

The background material contains excerpts of minutes of the board meetings. Certain sections of the regulation in question can be found on page 41. Page 42 is part of the Hansard debate referable to some legislation to which the Ombudsman will be referring by analogy and relying upon.

Before I ask Ms. Morrison and Mrs. Maslin to make their submissions to you, I would like to ask the representatives of the Ontario Northland Transportation Commission if they would please introduce themselves for the record and state their positions with the commission.

Mr. Dymant: I am Peter Dymant, general manager of the commission. On my left is Terry O'Connell, our counsel. Further on my left is Neil Drury, who is our director of human resources.

Mr. Bell: I have one further comment to make. There are some issues of definition, categorization and reference to legislation in this case. I ask you to take my word for it that it will be easier and will result in quicker understanding if we let Ms. Morrison go through her submissions before we ask questions. I had a rehearsal runthrough with Ms. Morrison and Mrs. Meslin last week. It will work better if we let them go ahead, then ask our questions in whatever order and with whatever frequency is appropriate.

Yesterday the process lent itself to the type of exchange that we had. This one, in my opinion, does not. With that, and with your permission, members, we will call on Mrs. Meslin. Do you have an opening statement before Ms. Morrison makes her submissions?

Mrs. Meslin: Yes. Today we are to consider the case of Mr. R. Again, we have brought this matter to your attention at this time because there is some urgency to it. Mr. R wishes to retire and will not be able to make the pension contributions he requests once he has done so. As you know, the Ontario Northland Transportation Commission does not believe that Mr. R should be allowed to make these contributions. The Ombudsman does not agree with the commission.

I am certain that the committee will wish to consider both the commission's position and ours very carefully. My staff is now prepared to outline our view of the matter for you and to answer any questions you may have. Ms. Morrison will present the Ombudsman's position, assisted by our general counsel, Michael Zacks, as well as Paula Boothby, assistant director of our justice, licencing and labour team.

Ms. Morrison: Good morning. I believe that we have quite a simple issue before you this morning. Of course, I said that yesterday. I am going to outline it to you in as simple a fashion as possible, drawing your attention to sections of the legislation involved and to general background facts.

In the material, as Mr. Bell pointed out, we have supplied you with some background information at the end of your volume. It is very difficult to read and I do not think you need to read it. It is there as an example of other legislation in which pension policy is outlined.

The background facts of this case are quite straightforward. I can run through them with reference to the synopsis on the first page of your material. I do not think that we differ greatly with the commission on the basic facts.

As you can see, Mr. R was first employed by the Ontario Northland Railway, the predecessor of the present commission, as a temporary construction lineman in 1957. He worked continuously without layoff for two years until May 1959, when he was made a permanent employee. At that time, he began to make contributions to the pension plan.

In September 1977, having worked 20 years, the complainant requested permission of the pension board of Ontario Northland to make pension contributions covering the first two years of his service. Following a pension board meeting, his request was denied. Again, in 1982, the complainant requested that he be allowed to contribute for the period from May 1957 to April 1959. Again, his request was refused.

Our investigation has revealed that in 1974, prior to the complainant's first request, other employees of the commission had made similar requests to

the pension board. Some of these employees had been allowed to make contributions to the pension fund for early noncontributory service. In 1974 the board granted a request from an employee in circumstances very similar to those of Mr. R. In that case the employee requested contribution for his six years of early noncontributory service.

In 1978, at a pension board meeting, the pension board adopted guidelines to assist them in making decisions about requests of this type. We will consider these guidelines in more detail in a few moments. This new policy of the pension board became effective January 1, 1979.

The issue is a simple one. Mr. R wishes to make contributions for the first two years he worked with the commission. We believe that Mr. R should be allowed to do so, and in saying so we rely on the regulations and the pension board policy as set out in your materials.

I would draw your attention first to the regulations at page 41 of your materials. These regulations are the basic authority for payment into the pension plan. The first regulation on that page, and I apologize for the quality of the Xeroxing, sets out the definitions that are used in the rest of the regulations. There you will see the definition of "employee," "contributing employee," etc. Regulation 3 sets out the amounts of contributions. Regulation 25 is the one that we feel allows Mr. R to make the payment he requests.

I will go through regulation 25 in more detail. It says, "For the purpose of these regulations, the names of all employees shall be entered on the staff records of the commission when they first enter its service, provided that the names of employees whose early service is of a casual or intermittent nature shall not be regarded as having been entered on such staff records until they have completed six months' continuous service or six months' cumulative service within a period of three consecutive years, unless in any case the board shall decide otherwise."

Those last few words are important because they put into the regulation some discretion on the part of the board. The discretion given to the board under that regulation is the discretion for which it attempts to make guidelines in its pension board meeting, which I will refer to in a moment.

The rest of the regulation, although it is not critical, says, "for the purpose of fixing the age of last entry into the service, employees who come within this proviso shall be regarded as having entered the service at the commencement of the six months' period of continuous or cumulative service mentioned in the proviso."

We believe that regulation 25 sets out the board's discretion in matters of entering employees' names into the pension records if those employees did not begin as permanent full-time employees.

We then turned to the board's policy as set out on page 40. This policy is outlined here in minutes from a pension board meeting in 1978. These minutes were supplied to us by the commission. You will see, if you read all of these minutes, that the board was at this point concerned to set for itself guidelines to deal with requests such as that of the complainant. They considered the matter at some length; in fact, I think this is a continuation of an earlier meeting on the matter, so it had been well considered by the board.

I draw your attention to the section marked (b)(i). As it says here, the board is trying to avoid possible unfairness in its decision about pension contributions and effective January 1, 1979, has adopted the following:

"(i) Where entry to service appears to be of a permanent nature--pension deductions to commence with the first pay period which begins on or after the first of the month immediately following entry to service.

"(ii) Where entry to service is presumed to be of a temporary or casual nature--pension deductions to commence with the first pay period which begins on or after the first of the seventh month following entry to service."

We believe that Mr. R falls squarely within the second section I just read. We note that his request was made in 1977. It appears to us, and our principal argument is, that Mr. R does in fact fall within this policy. However, there are other reasons behind our support of Mr. R's request. He made his request in 1977. Others had previously been allowed to make the same contribution that he requested to make. While this is not determinative, it convinces us that Mr. R is being treated unfairly.

The board policy in question became effective in 1979. His request in 1977 would not have been covered by the policy, so if the argument is that the policy does not apply, Mr. R's request was made before the policy was put in place. Others who made requests before the policy was put in place were granted their requests.

The other reason we support Mr. R's complaint is a general one. Pension policy over the past several years has been reviewed by many bodies in Ontario. One outcome of this was Ontario Proposals for Pension Reform, published in 1984, a general review of pension policy in Ontario. All of these documents and much of the discussion in the House, some of which is appended to your materials, relate to an expansion of rights for people in pension plans.

The proposals for pension reform suggest that part-time and casual employees be given opportunities to purchase pensions for the time they were not permanent employees. An objective in the proposals states, "Part-time workers with durable attachment to an employer should have the option of joining a pension plan." In general then, recent pension reforms have favoured broadening the availability of pensions to people who are part-time or who, for some other reason, were not included in the plan. We therefore think that there are strong policy arguments for supporting Mr. R's request.

The Ontario Northland Transportation Commission has said to us in response to our report that if Mr. R is allowed to make this contribution, many others would also wish to do so. They estimate that the cost would be very high. We have no figures which convince us of this.

As you may be aware, it will often happen that when the Ombudsman makes a recommendation to a governmental agency, the first response is, "Of course, we cannot do that; it would cost too much." The Ombudsman cannot be persuaded by such an argument unless he can be supplied with very certain figures on the matter. In this case, we are not convinced that the costs, which the commission suggests would follow from granting Mr. R's request, would indeed be realized.

10:30 a.m.

In brief then, we feel that Mr. R fits squarely within the pension policy of the commission. We do not feel that his request should be denied. We ask you to support our recommendation.

Mr. Philip: Why not hear (inaudible) next and then have questions?

Mr. Bell: All right. I just want to make sure we have full understanding of the impact or the implications of the recommendation. I will not be long.

The Ombudsman's actual recommendation is found at page 32 of the material. The conclusion of the Ombudsman in that paragraph is that the commission's refusal to accept the complainant's request for contribution for the two years was unreasonable. The recommendation, however, speaks to the pension board allowing the complainant to make contributions for the period from six months after the initial date. Does this mean the Ombudsman intends by his recommendation that, for pension purposes, the individual is to add 18 months to the years of service?

Ms. Morrison: Pensionable service, yes.

Mr. Bell: All right. We can relate that to the board's policy, because I heard you say that you are relying upon both the regulations and the board's own policy in support of this recommendation.

Let us turn to the policy at page 40. What you are saying is that this gentleman is covered by the policy and in particular item b(ii)?

Ms. Morrison: That is correct.

Mr. Bell: That is, "Where entry is presumed to be of a temporary or casual nature, pension deductions to commence with the first pay period," etc., after the first of the seventh month.

Ms. Morrison: That is correct.

Mr. Bell: The second ground you rely upon is regulation 25. Can you state again what it is about that section that you believe entitles the complainant to the relief he is seeking?

Ms. Morrison: Yes. The part of the regulation that is important to the application of the board policy is that the regulation sets out the general rule about pension contributions, but it also includes the phrase "unless in any case the board shall decide otherwise." It is my understanding of that section that it gives the board the discretion to set the very kind of policy that it did in fact set in the pension board minutes. In other words, I feel the regulations do not prevent the contributions sought by Mr. R.

Mr. Bell: How many categories of employees do you say regulation 25 creates?

Ms. Morrison: There is a general category of employee, the kind of usual employee who comes on line, is permanent and contributes to the pension plan.

Mr. Bell: Let us use the wording of the section. I do not see the word "permanent." There is a class of employees who are not otherwise defined, whose names are entered upon the records as soon as they start, whatever their category is.

Ms. Morrison: Exactly. However, there are some employees--

Mr. Bell: There is another category of employees--

Ms. Morrison: Perhaps two categories, but at least one.

Mr. Bell: Perhaps two--"whose early service is of a casual or intermittent nature." Those people are not to be placed on the record until after six months of continuous service or cumulative service.

Ms. Morrison: That is correct. The cumulative service must occur within three consecutive years.

Mr. Bell: Unless the board otherwise decides. Now we have two categories, possibly three. Are there any other categories of employees working for the commission, or who have worked for the commission, whose rights to pension may be an issue?

Ms. Morrison: There are no other categories set out in regulation 25.

Mr. Bell: Are there any others that you are aware of, by statute or otherwise?

Ms. Morrison: Not by statute, no. What I feel was done with regulation 25 was that the commission said: "Regulation 25 is the regulation under which people are making requests to us to contribute to the pension plan. We would like to clarify the way in which we grant those requests." In clarifying regulation 25, the board set out the policy that is on page 40. In that policy it uses some other terms. It uses the phrase "temporary or casual;" it does not use the words "casual" or "intermittent."

Mr. Bell: What has happened is that both the policy and the section contain the word "casual." We do not have a problem with that.

Ms. Morrison: That is right.

Mr. Bell: The policy speaks to "temporary." From your office's investigation and review of the relevant legislation, does anything in a statutory or regulatory sense speak to a temporary employee?

Ms. Morrison: The policy sets out only two kinds of employees.

Mr. Bell: I am not as concerned about the policy right now as I am about the law; i.e., statute or regulation. We have looked at two, possibly three categories of employees. Are there any others that have been created by statute or regulation that you are aware of?

Ms. Morrison: No.

Mr. Bell: The policy speaks of temporary.

Ms. Morrison: That is correct, and the policy has two sections, one for permanent and the other for the rest.

Mr. Bell: Okay. In relation to regulation 25, where do you say employees of a temporary nature fit?

Ms. Morrison: There are two arguments. The first is that regulation

25 sets out all other employees except permanent employees. It uses the phrase "casual or intermittent," but in clarifying that the board used the word "temporary." One argument is that in its clarification of the phrase "casual or intermittent" the board used the word "temporary."

Mr. Bell: Wait a minute. I do not want your argument; I want to know what your position is. Is the category of temporary employee as enunciated by the policy included in the category that the regulation creates, "casual or intermittent"?

Ms. Morrison: Yes.

Mr. Bell: All right. Reverse that. As for the policy, it speaks of casual; so we do not have any difficulty in that. Are we to presume, as far as your position is concerned, that "temporary" in the policy is equivalent to "intermittent"?

Ms. Morrison: I think we are to presume that "temporary" in the policy was intended as a clarification of "casual or intermittent."

Mr. Bell: Without reviewing the material in any detail, I take it there is no issue as far as the classification of this person's employment for the first two years is concerned.

Ms. Morrison: That is correct.

Mr. Bell: The commission itself has categorized him in a temporary classification.

Ms. Morrison: That is correct.

Mr. Bell: I see. That is how you come to your position that he is covered by the policy.

Ms. Morrison: That is correct.

10:40 a.m.

Mr. Bell: One last question. In your opinion, does the board have the discretion to permit this individual to purchase the entire 24 months?

Ms. Morrison: No.

Mr. Bell: It is limited to what, the 18?

Ms. Morrison: Hold on; I am sorry about that. The words "unless the board may decide otherwise" might be stretched to include a period other than that given in the regulation. I do not think that is an issue.

Mr. Bell: Because you are not asking for it.

Ms. Morrison: We are not asking for that.

Mr. Bell: The other applicants back in 1974 that you referred to--I understand there were a number of individuals who made requests to purchase early years of employment for pension purposes--were all those applications granted?

Ms. Morrison: Our information is that at least two were granted.

Mr. Bell: You said that in one of those cases the circumstances of the initial years of employment were similar to those of the complainant.

Ms. Morrison: Yes.

Mr. Bell: Can you be more particular with those similarities?

Ms. Morrison: Yes. In one case, the employee was a temporary employee who had six years of noncontributory service--he had not actually been in continuous service; he had had some layoffs--but the board ruled that pensionable service should be considered to commence six months following his initial employment. In other words, he was asking for exactly the same thing as Mr. R, except he had six years of early temporary service.

Mr. Bell: Members, I am in your hands. Do you wish to ask questions now of Ms. Morrison and Mrs. Meslin, or do you want to turn to the representatives of the commission and hear what they have to say before asking questions?

Mr. Philip: I have one question that can be answered fairly quickly, I am sure. In the light of the confusion between the wording "casual intermittent" in regulation 25 and the word "temporary" used in the policy on page 40, why did you not have as one of your recommendations that there be a clarification or redefinition, so we are not fighting over words here at some future date?

Ms. Morrison: We have suggested in our report that the terms are confusing. We did not make a formal recommendation that it be changed. However, depending on the outcome of your deliberations, I expect the commission may well wish to clarify that policy.

Mr. Philip: I would have thought it might have been worth while to have that as a recommendation in addition to your specific--

Mrs. Meslin: We did.

Mr. Philip: It is not part of your formal recommendation.

Ms. Morrison: No, it is not. Sorry; where is it?

Mrs. Meslin: Page 21.

Mr. Philip: It is all right. It does not prevent us from making it as part of our formal recommendations.

Ms. Morrison: That is correct. In our 19(3), it was one of our tentative recommendations. I believe it is not finalized in the final report.

Mr. Shymko: If there is a lack of clarity in regulation 25, as you state, who should interpret regulation 25? Would it be a committee of the Ombudsman, the Ombudsman, or whomever sets these regulations or enforces them?

Ms. Morrison: When we make our initial investigation and recommendation to the commission, we hope it will interpret them in the way for which we argue. When it does not see our interpretation as correct, we must bring it to you.

Mr. Shymko: In other words, there is a difference in the interpretation of regulation 25, and you want us to see your interpretation versus that of the pension board. According to regulation 25 itself, the discretionary power or the power of interpretation, if I may use that phrase, is granted to the board, is it not?

Ms. Morrison: We think that is correct.

Mr. Shymko: In other words, however we may interpret it, the discretionary power of interpretation is the board's; it is not ours or yours.

Ms. Morrison: But the purpose of your committee is to review discretionary decisions of governmental organizations to see whether you agree that they are making them appropriately.

Mr. Shymko: We are venturing into the area of the discretionary power. We are not questioning the discretionary power of the pension board.

Ms. Morrison: That is right. That is often the case with matters we bring to you. We usually bring them to you because we have said the governmental organization can and should do this but will not. It is the usual case we are talking about.

Mr. Shymko: It is to try to enlighten the wisdom of the interpretation of the board rather than to question the discretionary power it has in interpreting things in the way it does.

Ms. Morrison: Yes, as often happens with the Workers' Compensation Board, as you may recall.

Mr. Shymko: My other question has to do with your reference to the fact that there were two requests; one was made in 1977, I believe, and the other one was made in 1982. The difference between the two requests is that the first request was made prior to the 1979 policy and the other one was made after. The pension board agrees it made a mistake. In other words, prior to the 1979 policy, you fell back on a precedent, namely, a number of employees who were allowed to purchase their pension plan.

Ms. Morrison: Yes, if the policy is not in place. If we are talking about a time when the policy is not in place and therefore not applicable, then the argument must rest on the fact that others have been given the right that Mr. R requested.

Mr. Shymko: The board did not admit its mistake in 1977 or 1978. It admitted its mistake after the 1979 policy had been put in place, and it admitted a mistake based on the 1979 policy interpretation. In other words, we should be arguing the 1977 request and the precedents set with the other employees rather than arguing the 1982 request based on the 1979 policy.

Ms. Morrison: There are two arguments. One is the unfairness argument, which relates to the earlier request. The other is our argument that even when they put the policy in place, the policy they put in place applies to Mr. R.

Mr. Shymko: I just wonder whether we would carry more weight by not falling back on the 1979 policy but simply arguing on his first request in 1977, based on precedents of similar requests made and accepted by the pension board, period, rather than relying on the 1979 policy, where we will get into

an interpretation argument with the board, create a stumbling block and perhaps not be as successful. I do not know. How do you suggest we approach it? That is basically--

Mr. McLean: Mr. Chairman, on a point of order: Are you going to allow questions now, or are we going to hear from the other people?

Mr. Chairman: It is up to the committee.

Mr. Philip: Let us hear from the board.

Mr. Shymko: I still have not received an answer. Do you feel we should look at both elements?

Ms. Morrison: I have given you both grounds.

Mr. Shymko: Okay.

Mr. Chairman: Now I will call on the representatives of the board.

Mr. Dymant: Ms. Morrison started off by saying this was a "quite simple issue." I think the crux of our difficulty in this case is that it is not a simple issue; it is somewhat complex. All I can do is explain to you that it is not a simple picture with basic colours; there are some hues here that have to be understood.

We have to remember we are talking about the 1950s; that is when this thing took place. We are talking about an anachronism that cannot happen again, but it did happen in 1950 and it happened to many hundreds of people. We are talking about a railway and telecommunications enterprise. We are talking about 14 collective agreements. We are not talking simply about a pension regulation; we are talking about 14 labour contracts, all of which define "permanent" and "temporary" and get into all these other linguistic arguments.

10:50 a.m.

At the Ontario Northland Transportation Commission, because we are a railway and telephone company, we are ladderred in terms of our pensions and all of our labour relations not with the Public Service Superannuation Act, as I am sure many of you gentlemen will understand, but with the Canadian National Railway, the Canadian Pacific Railway and Bell Canada. Therefore, the reference to how we relate to the superannuation act is a good one, but it is not the only one.

We are definitely talking about a class action here. There can be no doubt that we are talking about hundreds of people who are watching what is happening here. We get many phone calls weekly from people wondering when they may put in their application for the same thing. If that figure is disputed, I can assure you that there are at least two who are watching the outcome: one is Mr. R and the other is me, because I stand to benefit from this. I can put in \$176 tomorrow and in four years I can gain \$2,000 back if this is allowed. Therefore, I am another one.

I want to explain that the pension board of Ontario Northland is composed equally of members of Ontario Northland management--commission representatives--and members of our labour unions. There are three labour union members, three management members and a neutral chairman on the board.

Decisions made by the board are influenced as much by labour's thinking as by management's attempt to cut the cost to taxpayers and provide good service. In this particular case, with all due respect, we have the Ombudsman's staff making an initial wrong assumption and following that wrong assumption all the way through to a wrong conclusion. I would like to try to demonstrate that.

To us, one thing is simple about this. We have a book called the pension regulations. There is a threshold for employees to become covered by this book, and whether it happened in 1950 or 1985 is irrelevant. There is a threshold past which people become covered by the book and before which they do not.

I would like to refer to the same regulation to which Ms. Morrison referred, regulation 25, which you have on page 41. Regulation 25 says, "For the purpose of these regulations," and it has to be covered by this, "the names of all employees." Before we get down to the last three lines, we will stop at the word "employees" and look on the same page that you have in front of you, where there is a definition of "employee." It says, "'Employee' means any person on the permanent staff of the commission." This sets the regulation. They are saying to any person who is on the permanent staff of the commission: "Read on. You are covered." The converse of that would be that for any person who is not on the permanent staff of the commission, there is something else.

Mr. Bell: Sorry, Mr. Dymont. I did not want to interrupt you. Can you just comment on the opening phrase of the definition section as it relates to section 25? That is, specifically:

"In these regulations, unless the context otherwise requires:

"(c) 'Employee' means any person on the permanent staff of the commission."

Might it not be an available interpretation that the context of section 25 requires "employee" to have a definition different from or wider than that of "permanent"?

Mr. Dymont: We do not believe so. I will go on to demonstrate that the word "permanent" in our view has no lack of clarity.

Mr. Bell: In any event, your position is quite clearly that in regulations 25 and 1 the definition of "employee" is the same.

Mr. Dymont: Yes. We have 1,004 pensioners, and in the cases of 1,003 it was interpreted that way.

Mr. Bell: Do you have people on staff, or have you had people on staff, who have been or are casual or intermittent permanent employees?

Mr. Dymont: Definitely. That is a characteristic of railroading. If I might just elaborate, a person who runs a train, an engineman, starts off with what they call a teddy bear. After he learns how to drive a locomotive, he may get one day's work a month, and it may take him as many as 15 years to work regularly, depending on economic conditions. Therefore, he is definitely intermittent or casual in his early years. That is a characteristic of railroading.

Mr. Bell: How is he permanent?

Mr. Dymment: He is permanent.

Mr. Bell: How?

Mr. Dymment: He is employed by Ontario Northland as an engineman.

Mr. Bell: How is he different from a temporary employee?

Mr. Dymment: I will get to that. Do you want me to explain it now?

Mr. Bell: Explain it when you think it is best for you.

Mr. Dymment: We are talking 1950 now. An engineman is just as I have explained. He works only when the senior engineman does not want to work or when the senior engineman has his miles in. He may get a day a month. As he gains seniority, he may get to be permanent after years. We may want to build a bridge across the river and it may take us 18 months to build. We will hire temporary people to build the bridge.

Mr. Bell: I did not mean to distract you that much. I mainly wanted your comment about the preamble of the definition section, but I understand what your position is.

Mr. Dymment: In our view, the threshold to be covered by these pension regulations is becoming a permanent employee. If there is any dispute as to what a permanent employee is, we have 14 labour contracts which define it.

Mr. Shymko: In other words, there is a temporary full-time and a permanent part-time employee. Is what you are trying to say?

Mr. Dymment: Absolutely. That is characteristic of railroads in North America.

In the 1950s, the people who were employed as temporary, capital-T temporary, for a project--the projects in those days were building pole lines for the telephone enterprise, building spare lines for the railway, projects of a known duration--were considered temporary employees, without exception, by Ontario Northland. They were not covered by the pension regulations because they were not considered permanent employees as defined by the regulations.

In addition, we can demonstrate with records that those people paid unemployment insurance. Mr. R was one of them. Those people did not pay pension. Mr. R was one of them. There are many others. In those days, the rest of us who were permanently employed did not pay unemployment insurance. The option was available. When they were temporary employees of Ontario Northland, those people were also given the option to apply for other jobs, perhaps totally unrelated. If they were qualified, they would get first choice when jobs became open. Mr. R, the record will show, was one of those temporary employees. He was paying unemployment insurance and was a temporary employee. When he became permanent in April, not May, of 1977, he started paying pension and discontinued paying unemployment insurance. The record will show that very clearly. Others did too.

There is a distinction in our mind, which we think is borne out by history, that in the 1950s when we had temporary people doing temporary work

of a known duration, they were excluded by what we think is a clear reading of the pension regulations but included by what we thought was a clear reading of unemployment insurance rules. All these people knew the rules and made a choice every six months. They could have reverted to a permanent list or applied for a permanent job had they wanted to. There were union regulations which articulated how they could be classified as permanent. There would be a rule, which I can show you, which would cover Mr. --

Mr. Bell: Please do not use his name; just the initial. That is two cookies you owe us. I will explain that later.

Mr. Dymont: To explain my personal involvement here, I am emotionally connected with Mr. R in this case.

Mr. Bell: You have declared your conflict of interest. We can understand that.

Mr. Dymont: I feel that one of the strongest arguments of the Ombudsman was to refer you to the regulation. I hope I have explained to you that in our view the regulation, in article 25, says it applies to employees and the definition section describes what a permanent employee is. People in 1950 who were employed on temporary projects could become permanent employees. I have 14 labour contracts, which you can read, which will tell you how they get to be permanent employees. They were definitely temporary.

Mr. Bell: You are saying that in order for anybody to become eligible under article 25, first he has to establish that the years he is trying to purchase were of a permanent employment nature?

11 a.m.

Mr. Dymont: Right, and they definitely were. Given that this thing is defining "permanent," there must have been something which was not permanent or they would not have put the word in there. The other word is "temporary."

Mr. Philip: You are also saying that under 25, an intermittent employee would be a permanent employee, but a temporary employee would not be a permanent employee.

Mr. Dymont: The words "permanent" and "temporary," in the capital P and capital T sense, describe the type of employment relationship with Ontario Northland. It could be intermittent or casual within those classifications. For instance, in the 1950s, we had people who worked--this may sound strange--on draining ditches. They were temporary temporaries, because you cannot drain ditches in the winter.

Mr. Philip: What were they?

Mr. Dymont: They were temporary people for a temporary pay, because you cannot drain ditches in the winter.

Mr. Bell: If you hired them every year, are they not permanent?

Mr. Dymont: They would become regular according to the union contract. We would rely on the union contract to define when they become permanent. It may be an accumulation of days.

Mr. Philip: If you hire them every year, they switch from being temporary to being intermittent, intermittent being every year rather than as in the case of the engineer.

Mr. Dymont: No, intermittent is to go and clean the drains when the drainings plug, which could be every time there is a flood or when the beavers build obstacles, etc. Intermittent is where, if I call you, when I call you, you will have about two days' work.

Mr. Shymko: Surely that would be permanent.

Mr. Dymont: That is definitely not permanent; that is temporary intermittent.

Mr. Philip: Then not all intermittent are permanent.

Mr. Dymont: Not necessarily. That is an example of a temporary one.

Mr. Bell: Not all permanent are intermittent. We need the syllogism board for this.

Mr. Dymont: They were temporary people who were working for a known duration for a job which was not continuing. They generally were not unionized. This would happen if we were going to build a bridge or, as an example, if we had people who did gardening. We were very environmentally conscious in those days. These were people we would hire in the summer, as you would hire a kid to mow the lawn. We would say, "We will call you when the lawn needs cutting." That is a temporary worker, working intermittently on an as-required basis. There were people permanently employed, such as an engineman driving a locomotive, who would work intermittently until they built up enough seniority.

Mr. Philip: What is a casual employee?

Mr. Dymont: A casual employee is analogous to an intermittent.

Mr. Philip: Why do you use two words?

Mr. Dymont: I have no idea.

Mr. Shymko: Since we deal with civil servants, would you make a parallel with a contract employee for Ontario and a full civil servant?

Mr. Dymont: I am afraid I am not familiar with the civil service rules and methods.

Mr. Shymko: For you, is "temporary" a contractual limited time arrangement, whereas with "permanent," you are a permanent employee with all the benefits, etc., of the company?

Mr. Dymont: Yes, I would accept that definition. That sounds very close to the method we use.

Mr. Shymko: Therefore, "contractual" is really what you mean by "temporary."

Mr. Dymont: It is for a definite period of time for a definite project. This man, Mr. R, was contracted or hired to build a pole line. When

the pole line was completed, he would have gone back to whatever he was doing prior to joining Ontario Northland.

Mr. Bell: Mr. Dymont, if you have finished your submissions for the regulation ground that the Ombudsman relies upon, I think we understand quite clearly what your position is. As far as you are concerned, the gentleman was not permanent for the two years in question and cannot be regarded as such by current definitions or whatever is available. Therefore, he is simply not entitled to the relief that regulation 25 contemplates.

Can you now move to the second ground? I think I should tell you, sending you a telegraph, that ground seems to be far more compelling for entitlement than the regulation. That is, why is this man not eligible, under the policy, for the relief that the policy contemplates?

Mr. Dymont: The policy is the verbiage which Ms. Morrison referred to on page 40. Ms. Morrison directed you to read (b)(i).

Before you get to (b), I would ask you to read (a). We are talking about Mr. R. This says: "In view of the very large number of active employees affected, not to mention the indeterminate number of employees already retired who could be in exactly the same position," and we are talking about Mr. R, "it was concluded that it would be a practical impossibility to develop a favourable response to these particular requests to purchase past service for pension purposes which would be available to all who may have been similarly affected.

"It was the decision of the board," and this is policy as much as section (b) is policy, "therefore, that all current requests and those of a similar nature which may be received in future, should be denied with the regrets of the board...." This is why Mr. R's request was denied.

Mr. Bell: Are you saying that for all employees, current and retired, who have applied or who may be eligible to apply for the relief in question, by this policy the board has refused and will refuse those requests? Do I anticipate that you are saying that (b) was intended to refer only to future employees?

Mr. Dymont: Most definitely, and that is the way it has been applied.

Mr. Bell: Then you tell me where it says that in the policy.

Mr. Dymont: I think it is implicit in (a) when it says, "all current requests and those of a similar nature" are to be denied and in the future this is how you will handle people you hire. That is straightforward.

Mr. Bell: I now understand your position. You are not challenging that, given the same circumstances of an employee who is eligible under this policy, this complainant would be entitled. In other words, if this complainant had started work yesterday and two years hence or thereafter made an application to purchase those two years, he would come within the policy.

Mr. Dymont: If this person had started yesterday, he would be covered by a labour contract which would make it extremely clear.

Mr. Bell: Okay, that was a bad example.

Mr. Philip: There are words in the policy that make it clear that it

does deal with the future. Those words are in the last sentence of (b). It says, "In an effort to avoid these situations, the following practice will be adopted effective January 1, 1979." That is a clear statement that future temporary employees will be covered.

Mr. Bell: Where does it say that past temporary employees are not? That is my question.

Mr. Philip: The past are not because of (a).

Mr. Shymko: If we read part (b), I think it obviously refers to some mistakes in the past and that past criteria shall not apply in the future as of January 1, 1979. That is what (b) says, I think.

Mr. Bell: What is the rationale for distinguishing--I will not use the word "discriminating" though I almost did--between the so-called past employees, of whom the complainant is a member, and the future employees?

Mr. Dymont: There was recognition in 1977 that the situation in which Mr. R found himself, as well as many hundreds of others, could not happen. It was a thing of the past. Therefore, it was simply defining that Ontario Northland is hiring permanent people only; therefore, whether they are intermittent or casual, here is how you will apply things in the future. There is no need to go back and define Mr. R's circumstance, because it could not repeat itself.

Mr. Shymko: In other words, prior to January 1, 1979, this policy was quite flexible, lenient, charitable, compassionate and sensitive; individuals could apply, pay back and so on. Then you saw a financial crunch and the possibility that this would be a financial burden to the company and you decided to change the policy. Is my interpretation correct? This is notwithstanding the pain of someone else who worked, was compensated, receives a pension and could have bought it back. The financial burden was such that it was purely a monetary aspect that guided the decision in 1979.

Mr. Dymont: No. In 1977-78, we recognized there were things that had taken place in the 1950s which could not take place in the future. They had not taken place in the immediate past. We recognized a different era. There were different union contracts and different means and classifications of employees.

11:10 a.m.

Mr. Shymko: In the summary we received, there is a reference to 300 people who may be affected in the same way. I think you referred to yourself as being one of them--

Mr. Dymont: Exactly.

Mr. Shymko: --and to the more than \$1 million that it may cost the employer.

Mr. Dymont: Right.

Mr. Shymko: So there is a financial aspect. You are not going to deny that.

Mr. Dymont: There certainly is a financial aspect, but our decision

not to concur with the Ombudsman does not revolve around the \$1 million.

Mr. Philip: Surely all 300 have not appealed in any way. The fact that someone has applied or appealed puts him in a different category from the others who have not made an application, does it not?

Mr. Dymont: There is pretty rigid and undeniable evidence that there have been in the area of 50 to 60 requests.

Mr. Philip: How many of the earlier ones who would have been classified as temporary employees, in the same category as Mr. R prior to your bringing in this policy in 1979, were granted permission to contribute?

Mr. Dymont: The Ombudsman says there were two, and he says one was similar. We concur that there was one, but it was not similar; it was identical. We know of only one that is identical.

Mr. Bell: You admit that?

Mr. Dymont: Absolutely.

Mr. Bell: You say that was a mistake.

Mr. Dymont: That was a mistake.

Mr. Bell: Why was it a mistake?

Mr. Dymont: It was a decision made by the board in 1976 or 1977. I can only speculate. My speculation is the board members did not read the regulations fully, but they sure did subsequently.

Mr. Shymko: We do not know, do we?

Mr. Dymont: No, but they did issue a policy statement, item (a) of which says, "There are other requests. Deny them."

Mr. Shymko: It may have been an interpretation of the policy.

Mr. Dymont: It may have been.

Mr. Bell: Wait a minute, the policy did not exist.

Mr. Shymko: There may have been a policy before 1979. I am sure there were some guidelines for making decisions.

Mr. Bell: May I complete my list? Then I will be quiet.

Mr. Dymont, do you agree that the board has the authority to grant these requests if the board identified circumstances to warrant it? You may want Mr. O'Connell to answer that because I am using the word "authority" in the legal sense.

Mr. Dymont: If you are using the word "authority" in the legal sense, I will let Mr. O'Connell answer.

Mr. O'Connell: The authority is derived from the pension regulations. The pension regulations can be amended only by order in council. My answer to that is unless you change the definition of employee, you cannot allow what you are suggesting.

Mr. Bell: Hold it now. You have done it in the policy. What you have said in the policy is that in the future employees whose service is presumed to be of a temporary or casual nature shall be entitled to purchase up to 18 months of the first two years.

Mr. O'Connell: Yes, well--

Mr. Bell: Stop. There is no doubt that the board has the authority to do that. Right?

Mr. O'Connell: I disagree. When you use the word "employee" in regulation 25.1, you have to use the definition of employee as it exists in the regulations. The regulations say "permanent."

Mr. Bell: I am not talking about the regulation. I am talking about the policy that your client has drafted where it says, "Service is...presumed to be of a temporary or casual nature."

Mr. O'Connell: Yes.

Mr. Bell: One thing we all understand in this room this morning is that temporary does not include permanent. If it does, the Ombudsman has you under regulation 25.

Mr. O'Connell: There are two definitions. There are two categories of employment. One is temporary and one is permanent. The nature of that employment may be casual, intermittent or temporary.

Mr. Bell: Let us just stick to temporary. This policy, you will agree with me, gives the board the discretion to permit an employee whose first two years of service are presumed to be temporary to purchase for pension purposes up to 18 months of that two years. Do we agree?

Mr. O'Connell: I wish to reiterate that we are talking about a temporary nature. If we are talking about a temporary nature, we are talking about a capital-P permanent employee who has employment of a temporary nature. There are only two categories.

Mr. Bell: Forgive me, but that is one of the greatest word games I have ever heard. We are now talking about a permanent employee of a temporary nature. What are you telling me? That this policy is intended by the commission to apply only to permanent employees?

Mr. O'Connell: I am saying that when Mr. R was initially hired in April 1957, he was hired as a capital-T temporary construction lineman. In April 1959, he was hired as a capital P-permanent construction lineman. They are two totally separate categories of employment.

Mr. Bell: I want an answer to my question, please. Are you now saying that this policy is intended by the commission to apply only to permanent employees?

Mr. O'Connell: Yes, because "employee" means someone who is on the permanent employment of the commission.

Mr. Bell: Then why do you have the word "temporary" in the policy?

Mr. O'Connell: "Temporary" relates to the nature of the employment, not to the category of employee.

Mr. Bell: The commission has created the category of a permanent-temporary employee. Is that correct?

Mr. O'Connell: A permanent employee may do work of a temporary nature, as illustrated by Mr. Dymont's example of someone who is on the spare board and operating as a rover.

Mr. Bell: So a permanent employee in some circumstances can do temporary things?

Mr. O'Connell: Exactly.

Mr. Bell: Is that definition of "temporary" to be found within section 25 of the regulations?

Mr. O'Connell: Section 25 of the regulations uses the word "employee," and "employee" is defined in clause 1.1(c) as "any person on the permanent staff of the commission."

Mr. Bell: Is your definition of "temporary," for the purpose of this policy, to be found within the definition in section 25 or in the definition of "employee" in the regulations?

Mr. O'Connell: It is excluded, because the definition of "permanent" excludes "temporary."

Mr. Bell: Why do you have it in the policy?

Mr. O'Connell: "Temporary" relates to the nature of the employment and not to the category of employee affected.

Mr. Bell: The nature of the employment then must be found within the regulations. It must be included within the regulations.

Mr. O'Connell: The nature of employment is referred to in the regulations.

Mr. Bell: When we look at section 25, we see three descriptive phrases: "employees" without any adjective assigned to them on the second line and "casual or intermittent" on the fifth line. That is the only description of "employees" within that section.

For the purposes of this discussion, I will give you your definition of "employee" under subsection 1.1, that whatever that means in those two sections, it includes the temporary nature that we have been talking about.

Mr. O'Connell: I admit that, but it does not include capital-T temporary employees, because everyone understood that if he was a temporary employee, he was not covered by the regulations. That was universally understood.

Mr. Cordiano: Temporary employees do not exist any more.

Mr. O'Connell: They do not. They are an anachronism. They were contract employees for specific purposes.

Mr. Shymko: May I ask a question along this line? I am totally confused by your questioning and the answers here. Can we take a look at page

40, subclause (b)(iii) of the policy where it speaks of "temporary or casual nature"?

Would I read, "where entry to service is first presumed to be of a temporary or casual nature," as really saying, "where entry to service is first presumed to be of a permanent, temporary or casual nature"? Is that what you mean?

Mr. O'Connell: A permanent employee who is doing work of a casual or temporary nature.

Mr. Shymko: If you follow that logic, what you are concluding at the end is that after the first--It says, "pension deductions to commence with the first pay period which begins on or after the first of the month immediately following the change from temporary," meaning permanent, "to permanent status. In other words, you are saying, "the change from permanent to permanent." What logic is that? What change is it if you are saying that a man is changing from permanent to permanent? The man's job has been permanent.

11:20 a.m.

Mr. O'Connell: Unfortunately, I think there has been a confusion in logic in relating "continuous" with "permanent." Permanent and temporary relate to two categories of employee. From April 1957 until April 1959, Mr. R was a temporary employee who happened to work continuously. Had he not worked continuously, rather than paying pension contributions, he paid the unemployment insurance commission. If he paid UIC and only worked three months in 1957, he would have got his unemployment insurance. In 1957, he opted to pay UIC rather than pension. He was a temporary employee and was paid at a different scale. He was a totally separate type of employee.

On April 1, 1959, he became a permanent construction lineman. The first pay period, which ended on the April 15, 1959, showed that Mr. R then stopped paying UIC and started paying pension. He was then put on the rolls as a contributing employee, as defined in section 1.1, and he became a permanent employee.

Mr. Shymko: So with respect to intermittent, casual, temporary, all of it to you means either you could be casual, intermittent or temporary on contract?

Mr. O'Connell: Yes.

Mr. Shymko: Or you could be casual, intermittent or temporary as permanent?

Mr. O'Connell: Yes.

Mr. Shymko: There is a hell of a semantic problem here in the use of words, both in the regulations and in your interpretation of policy. It is very confusing, unless you are trying to get around the regulations by defining the status things. It really is a mess.

Mr. O'Connell: With respect, this is not ex post facto. I suggested when we came here that perhaps if we had a capital T and a capital P--and I am not being facetious--then this person could be defined as a temporary construction lineman who may work intermittently, who may work continuously, who may work on a temporary basis, but he is not a permanent construction

lineman until he gets his placard with a capital P. Then he has a change, he begins paying pension, is entered on the rolls and passes the threshold that Mr. Dymont referred to.

Mr. Cordiano: You said no temporary workers exist now, or do they?

Mr. Dymont: With reference with a capital T, no. In 1962, that type of employment was disbanded, done away with.

Mr. Cordiano: For all intents and purposes, you will not have that problem again.

Mr. O'Connell: It is an anachronism; it cannot occur again.

Mr. Bell: Cannot is a pretty strong word.

Mr. Cordiano: Exactly.

Mr. Bell: We are not all going to be associated with the commission in any way for the indefinite future.

Mr. Dymont: Mr. Bell, we have 14 union contracts which tell us we cannot do it.

Mr. Bell: You have a court of law that might tell you something else.

Mr. Dymont: It could be.

Mr. Bell: Was either of you gentlemen involved in the drafting of the policy?

Mr. Dymont: No.

Mr. Bell: All right. Who was? Who drafted the policy?

Mr. Dymont: Tom Farmer.

Mr. Bell: What his position with the commission?

Mr. Dymont: Counsel.

Mr. Bell: Legal counsel?

Mr. Dymont: Right.

Mr. Bell: All right. Has anybody ever asked him what his definition of temporary nature is under the policy?

Mr. Dymont: He is deceased.

Mr. Bell: Mr. O'Connell, have you ever given an opinion or has the commission sought and obtained a legal opinion as to the definition of temporary nature as it applies to your current act of employees?

Mr. O'Connell: I have given my opinion that the regulations, as I understand them, are clear and are unambiguous. If you appreciate the distinction between temporary and permanent categories of employee, then logically the regulations and the policy adopting these regulations apply only to permanent employees. That is the opinion I have given.

Mr. Bell: Can you and I agree--and let us put it on this basis--that there is some ambiguity in this policy?

Mr. O'Connell: I cannot agree with that, Mr. Bell.

Mr. Bell: You cannot. The category permanent temporary is not an ambiguous term in your view.

Mr. O'Connell: In fairness, the Ombudsman's counsel had the opportunity of relating the facts as they saw them. As you are aware, we submitted a statement that commences on page 7 of the facts that we believe in. The logic we are following is put forward in our submission and perhaps the committee, on its own, could consider the submission.

Mr. Bell: We will do, but first let me have an answer to my question. I want your opinion on record that the phrase or the categorization of "permanent temporary" is not ambiguous.

Mr. O'Connell: Not in the context of the regulations as interpreted.

Mr. Bell: Is it ambiguous in any context?

Mr. O'Connell: It is ambiguous in a literal sense if you are not using a capital P in your mind for permanent and not using small-t temporary to show the nature of that employment for that category. There happens to be a mental conflict if you do that. If we all think in terms of two categories and know that the nature of that employment can vary, then it is not.

Mr. Bell: So that I understand fully, the late legal counsel drafted this policy, presumably pursuant to some instructions and direction from the board. Is that right?

Mr. Dymont: That is correct.

Mr. Bell: That is what you believe?

Mr. Dymont: That is what I know. Mr. Farmer was one who of those who drafted it. The person who drafted it with him was a fellow by the name of Don Allen. The Ombudsman's staff have met Mr. Allen. His correspondence is on the file. He gave us the interpretation we are using.

Mr. Bell: So one of the authors has given you the interpretation, and that is at least what he intended?

Mr. Dymont: He has also given it to the Office of the Ombudsman.

Mr. Shymko: Is that interpretation on paper?

Mr. Dymont: He helped write this and he responded to Mr. R.

Mr. Shymko: Is there anything on paper that says what you just said here today about permanent temporary and permanent permanent, capital T and capital P?

Mr. Dymont: It is a implicit thing in the railroad business. For example, there seems to be confusion about somebody hired for a permanent temporary classification. We have labour contracts that say if we hire a section man--that is a guy who fixes rails, ties and ballast--after three

months' work he becomes a permanent employee. The labour contract says that he is a permanent employee after he works for three months. We often give those men six months' work. The labour contract says he is permanent. Is our relationship with him not temporary if we are talking six months' work? We call that permanent temporary, and if that is ambiguous, so be it.

Mr. Philip: Under your present rules effective as of 1979, he would be contributing to the pension plan?

Mr. Dymont: Absolutely. There is no doubt about it.

Mr. Philip: However, if that had happened in 1959, he would not have been contributing because he would then have been labelled as a capital-T temporary employee?

Mr. Dymont: No. He would also have contributed to the pension plan in 1959 because the labour contract was in effect in 1959, but he is a permanent temporary, which Mr. Bell has trouble in accepting.

Mr. Philip: Was there a contract for Mr. R at the time that he was first employed in 1957?

Mr. Dymont: He started in 1957 in a nonunion contract job, not at all like the section man I mentioned. This was to do a specific piece of work for a preset period of time.

Mr. Philip: Was there a personnel policy in effect at the time that you can locate or produce for us?

Mr. Dymont: I rather doubt it.

Mr. Philip: Was there a personnel policy at the time he applied, which was one year before your policy statement on page 40 and two years before your regulations on page 41? You say on page 8 that the Ombudsman had misinterpreted your pension board policy as of January 1, 1979, but I do not see in the literature supplied to us any copy of that policy.

Mr. Dymont: Are you referring to the policy referred to on page 8, item 1?

Mr. Philip: Yes.

Mr. Dymont: That is the policy on page 40.

Mr. Philip: How could you have made a decision that denied him when he applied before the policy on page 40 was spelled out? He applied in 1977.

Mr. Shymko: They are denying the 1982 application.

11:30 a.m.

Mr. Dymont: He applied first in 1977, and we denied his request.

Mr. Philip: The policy on page 40 and the regulations on page 41 could not have applied in 1977. There must have been some policy there at that time.

There was no policy? Then if there was no policy, how can you deny

someone if there is no policy on which you can deny it?

Mr. Dymont: Have you read the book?

Mr. Shymko: That book was printed after 1979, and the policy had been accepted. What I think Mr. Philip is trying to say--and I think I understand him--is that if this man had applied only in May 1982 and made that request, there is no way the Ombudsman or this committee would have backed him, if the interpretation we have of your policy is correct.

However, the man applied in 1977, and I think your refusal in 1977, before the 1979 policy was set in place, really was not fair when you look at the precedent you set in 1974 by allowing another individual in the same category to make contributions after six years of so-called temporary service.

Let us forget the 1979 policy. Let us go back to 1977 and the man's request.

Mr. Dymont: Okay.

Mr. Shymko: What was your policy in 1977 when the man made that request after you had set a precedent in 1974 with another employee?

Mr. Dymont: In 1977 he made a request to buy back his pension.

Mr. Shymko: Right.

Mr. Dymont: We disallowed it for the same reason that I went over with the committee earlier, that he was not a permanent employee.

Mr. Philip: What we are asking you for is a copy or some proof that you in fact had a policy statement in 1977 that we can read, and rather than take it on some of kind of mystical faith that the same policy existed in 1977 as existed in 1979 and was codified in 1980.

Mr. Dymont: In 1977 all we had was this blue book, and it was interpreted. In 1979 the board issued this policy as a clarification in applying this blue book.

Mr. Philip: Is there a date on that blue book?

Mr. Dymont: Yes.

Mr. Philip: What date is on the blue book?

Mr. Dymont: Effective May 1, 1939.

Mr. Bell: Can you give us a copy of that?

Mr. Dymont: No problem. The Office of the Ombudsman has several.

Interjections.

Mr. Zacks: This is our one copy.

Interjections.

Ms. Morrison: Is that what your regulations on page 41 are copied out of?

Mr. Dymant: Yes.

Mr. Bossy: May I have some clarification? A statement was made concerning requests that you said numbered in the area of 50 to 60. How many of these requests were made prior to 1977?

Mr. Chairman: Mr. Bossy, would you move closer to your microphone?

Mr. Bossy: I want to clarify your statement that about 50 to 60 requests were made. Maybe I should qualify that by asking how many of these were made at the same time Mr. R made his first request.

Interjection Prior to 1979.

Mr. Bossy: That is prior to 1979. The policy really only came in in 1979, but the discussions took place in 1978, and the request had originally been made in 1977. Was the necessity of clarification because of the request of Mr. R or these other 50 or 60 you were talking about?

Mr. Dymant: The 50 or 60 are recent requests, within the last two months. At the time Mr. R made his request there were eight at the same time.

Mr. Philip: I wonder whether I can carry on with my questioning. I am sorry. You slipped in on me when I was getting a copy of the book.

This book that you have supplied us with is really not helpful, because it says, "Effective May 1, 1939," but it also says "Revised to July 1, 1980." Without knowing what the revisions are I have no idea by reading this whether it is a policy that existed in 1977 or whether it is the policy that existed in 1977 plus revisions, which is what you have on page 41.

Mr. Dymant: I have one here dated 1966, if it would help; it would be the same, though. Before I give it to you, I would like to say that this policy, this sheet of paper that we are referring to as policy, is attempting to clarify the application of this book. That is its simple purpose.

Mr. Bell: Do you think it accomplished that?

Mr. Dymant: It has for us, but--

Mr. Bell: Do you think it has for anybody reading it who is not familiar with the commission, its workings and its past decisions?

Mr. Dymant: There is something fundamental here in that this pension plan is to impact on our 1,600 employees and 1,000 pensioners. The plan is defined in the book, or its earlier version in that grey book, and the application of these rules is made by equal numbers of union and management people. I do not know what more widespread concern we can get for our employees.

Mr. Epp: I think it is a great help in making temporary employees permanent, because of all the confusion it has caused. Your lawyer has probably made a lot of money making all that confusion in it and making work for himself.

Mr. Dymant: We put him on the payroll. We got around that. He is permanent full-time.

Mr. O'Connell: Permanent temporary or permanent permanent?

Mr. Baetz: Permanent permanent.

Mr. Morin: Were there any requests prior to 1974?

Mr. Dymment: Sixteen.

Mr. Morin: Were there any granted, or were those the two?

Mr. Dymment: No. He is one in December 1973, so I was wrong. There was one in 1973, and they stretched through to 1977. These would be requests not similar to Mr. R's, except for one, which we admitted was identical to his. But the other seven were people who wrote in and said, "I was denied my early service because I was declared unfit medically." That is not a good reason, and we said, "We agree with that."

Mr. Morin: It is not similar to this one.

Mr. Dymment: There is one that is not only similar, it is identical, and we granted it.

Mr. Bell: Gentlemen, for the record--we are going to read this afterwards--can you give us an example of a permanent temporary employee?

Mr. Dymment: Absolutely. As I mentioned earlier, we would hire a man to work on our rails and railbed. Once he worked with us past a 90-day interval, by union contract he is called permanent. But we hire a lot of those people only during the good weather season. When he starts, we may give him seven months' work. He becomes permanent after the first three months, and after seven months he disappears from Ontario Northland.

Mr. Bell: What is he for the first three months?

Mr. Dymment: We would call him probationary. I really hesitate to introduce that term.

Mr. Bell: Yes, please hesitate. What is he for the second three months?

Mr. Dymment: He is a permanent temporary employee.

Mr. Bell: You said that in the seventh month he is gone. Does he ever come back?

Mr. Dymment: He may.

Mr. Bell: "May" is indefinite. There is no plan or schedule for his return in the next season?

Mr. Dymment: No, but next season we may need people; he may reapply.

Mr. Bell: You say he is permanent because the collective bargaining agreement that applies calls him that.

Mr. Dymment: Exactly.

Mr. Baetz: If he wanted to come back the next season, would he have

priority over somebody who had never been temporary permanent with you?

Mr. Dymont: We do that as a matter of course simply because he has some experience.

Mr. Baetz: But there is nothing in the labour contract that says he would get priority.

Mr. Dymont: In some labour contracts there is that rule, and in others there is not. We have 14, and they are dramatically different.

Mr. Epp: Is he aware of exactly what he is

Mr. Bell: Confused--that is what he is.

Mr. Epp: After the first three months, he is temporary?

Mr. Dymont: No, he is permanent.

11:40 a.m.

Mr. Epp: For the first three months, he is probationary. When he goes from day 90 to day 91, does he know that all of a sudden he has entered a new category?

Mr. Dymont: Yes, he is aware of it because--

Mr. Epp: Does he sign something?

Mr. Dymont: No, he does not sign anything, but his pay goes up. In addition, his union representative contacts him and says, "Now I am representing you."

If I might, I will read the section. One book covers 180 track courses. It says:

"A new employee shall not be regarded as permanent"--this is a contract we sign with labour--"or re-employed until after three months' service, which service must be accumulated within the preceding 24 months. But in the three-month period he may, without investigation, be removed for cause in which, in the opinion of the company, renders him undesirable for service." It goes on and on.

The Brotherhood of Maintenance of Way Employees says that we hire a man to work on our rails, but after three months he is considered permanent. We may hire that same man for a four- or a six-month period. We, in our judgement, call that temporary.

Mr. Baetz: When does this category start paying his pension?

Mr. Dymont: Six months.

Mr. Baetz: At six months, at the beginning of the seventh.

Mr. Dymont: He does at six months.

Mr. Bell: No, he is not around.

Mr. Dymont: If he stays for seven months, he pays pension for a month.

Mr. Epp: Let me ask one more question. Does he know he is there for only three more months?

Mr. Dymont: Yes, he most definitely knows that.

Mr. Morin: Does he have the option, even though he is temporary, to continue contributing to his pension plan? In other words, if he works on a temporary basis, although he is permanent, for three months, and he is off for another three months, can he contribute to the plan even though he is not being paid a salary?

Mr. Dymont: No.

Mr. Morin: While he is not employed?

Mr. Dymont: No, his record is closed.

Mr. Morin: So he can contribute for six months if he works for six months, and if he is hired again on a temporary basis, he can contribute.

Mr. Dymont: It accumulates. It is counted.

Mr. Baetz: Under the new pension reform, people like that would be eligible to pay, would be required to pay pension.

A lot of water has gone over the dam since I wanted to raise my question about an hour ago, but we keep hearing that there are many other identical cases to Mr. R's.

Mr. Shymko: Just one.

Mr. Baetz: You said that you yourself were rather in the category of Mr. R. What I am worrying about is why, if there are similar cases to Mr. R's, we are dealing (inaudible) Mr. R get to the Ombudsman? Is it a case of the squeaky wheel? Are we ending up here with a class action? If he is different, what precisely sets him apart from all of the others who are somewhat similar?

Mr. Dymont: Nothing sets him apart. The reference to one, incidentally, was one case we allowed that was identical to Mr. R's situation.

In our view, Mr. R's processing of this thing is a class action. Ontario Northland, in northeastern Ontario, is a big fish in a small pond. The grapevine is an excellent process. Good communication exists between the union and the employees. There are 1,400 people, 350 of whom are deeply involved in watching Mr. R.

Mr. Baetz: Okay. So there are many out there who are quite similar.

Mr. Dymont: Including me.

Mr. Baetz: That is what you said earlier.

Mr. Shymko: Did any of those 300 apply prior to 1979? Out of the 300 you mentioned, did any apply before 1979?

Mr. Dymont: Absolutely.

Mr. Shymko: Seriously, did you have applications from the 300 applying before 1979, before this policy statement?

Mr. Dymont: I can tell you only that, prior to 1974, we had 16 applications. What I can not tell you is how many each case represented. For instance, in November 1977 a request was considered for six people. We call it one request, but it was on behalf of six people. When I say there were 16 requests, I do not know how many each of them represented.

Because the unions are involved, the other employees are just sitting back and saying, "Let Mr. R carry this one through. It speaks for us."

Mr. Baetz: We are dealing with a class action, are we? It is not only Mr. R?

Mr. Dymont: In my view, it is a class action.

Mr. Bell: Let me and/or Mr. O'Connell finish the questions. Can we please look at page 40, the policy. I want to understand item (b) as best we can. You have told us, and we understand your position is, that it was intended to be prospective as for the date--I guess May 12, 1978--and not retroactive. We have to look at the language of that and make some decisions. You have now told us, and we understand that the policy applies only to permanent employees. We agreed on that.

Mr. Dymont: Subsequent to 1962, there were no more capital-T temporary employees, so that whatever work turned up on this policy, it applied to.

Mr. Bell: No. Mr. O'Connell told me before that this policy is considered to be consistent with the regulations and therefore applies only to permanent employees. Correct?

Mr. Dymont: No. I must point out once more that these labour contracts define a permanent employee, as we just went through.

Mr. Bell: With respect, the regulations define a permanent employee. A collective bargaining agreement does not define anything.

Mr. Dymont: With respect, the definition says, "'Employee' means any person on the permanent staff..." All that says is that to be pensionable, employees must be on the permanent staff. We must now go to another document to find out what permanent staff is. There are 14 of these.

Mr. Bell: It is on the record. If we have to get an Instant Hansard over the lunch hour, we will. You told me this morning that the policy applies only to permanent employees. Are you saying it applies to some additional class of people other than permanent employees?

Mr. Dymont: The policy is self-explanatory. If you want to call them permanent or temporary--

Mr. Bell: I am getting a little tired of the word games. I want a straight answer. Does this policy apply only to permanent employees? Why else have we had the exercise of understanding what you mean by "permanent temporary"? Does it apply only to permanent employees?

Mr. Dymont: I will say yes.

Mr. Bell: Thank you. We go to item (i) of (b). It says, "Where entry to service appears to be of a permanent nature...." All permanent employees?

Mr. Dymont: Right.

Mr. Bell: Then there is eligibility "to commence with the first pay period which begins on or after the first of the month immediately following entry to service." That is intended to apply to all your permanent employees?

Mr. Dymont: No, Mr. Bell.

Mr. Bell: What permanent employees does it intend not to apply to?

Mr. Dymont: We might hire a person--and you have asked me now to call all of them permanent, so I will--a permanent employee, and he or she may be a technician in telephone operations. That employee is a permanent employee and the job duration is of a permanent nature. That employee can expect to retire with Ontario Northland, unless the bottom drops out of the telephone business. The same day we may hire what you have asked me to call a permanent employee and we may give that permanent employee a commitment for three months' work. We do not call that a permanent nature.

Mr. Bell: Then you want to change your answer to me when I asked you if item (b)(i) refers to all your permanent employees.

Mr. Dymont: I can live with that.

Mr. Bell: You can live with it?

Mr. Dymont: As long as you will accept that the work duration can be different.

Mr. Bell: Item (i) applies to all of your permanent employees.

Mr. Dymont: Which is the nature of the work or the job classification.

Mr. Bell: Does that mean all of your permanent employees? Mr. O'Connell is shaking his head, indicating no.

11:50 a.m.

Mr. Dymont: The hangup with the committee and myself is that we are talking about the nature of the work as one thing.

Mr. Bell: You know what the hangup is? You have created three classes of permanent employees.

Mr. Dymont: Perhaps we have.

Mr. Bell: You have created a permanent employee who has a permanent nature to his work, a permanent employee who has a temporary nature to his work and a permanent employee who has a casual nature to his work.

Mr. Dymont: I would go along with that.

Mr. Bell: Right, okay. The regulation creates perhaps another class of permanent employee who has an intermittent nature to his work.

Mr. Dymont: It is argued that the regulation is consistent with what was just said.

Mr. Bell: There is nevertheless another category introduced by 25, one who is a permanent employee by your definition but whose service is of an intermittent nature.

Mr. Dymont: That is an adjective.

Mr. Bell: Yes. So we have the potential for four classes of permanent employees, you say, by the combination of the regulations and the policy.

Mr. Dymont: In our view, intermittent and casual are the same thing.

Mr. Philip: No, it is not the same thing.

Mr. Dymont: I would like to describe three--

Mr. Shymko: So (b)(i), which was read by Mr. Bell, is not applicable to permanent casual, permanent intermittent or permanent temporary. Am I correct?

Mr. Dymont: Yes.

Mr. Shymko: So there is such a thing as permanent temporary.

Mr. Dymont: Absolutely, no problem. I buy that.

Mr. Shymko: It is not applicable to permanent temporary. So (b)(iii) applies to permanent temporary, to the six-month period. It refers to the permanent temporary, permanent casual, permanent intermittent.

Mr. Dymont: Intermittent is not used in that.

Mr. Shymko: It is referred to in regulation 25, which you understand as permanent intermittent; so there is a permanent intermittent category.

Mr. Bossy: Regulation 25 distinguishes between casual and intermittent.

Mr. Shymko: No, it does not, according to Mr. Dymont. Mr. Dymont reads regulation 25, if I am correct in interpreting, as "the names of all permanent employees shall be entered on the staff records of the commission when they first enter its service, provided that the names of the permanent employees whose early service is of a casual or intermittent nature...." You are talking about permanent employees with a casual or intermittent nature. That is how they interpret everything. As of 1979, you interpret this way, but you do not interpret that any earlier than 1979, from my understanding.

Mr. Dymont: We used that interpretation earlier, but I do not know at what point we stopped using capital T-temporary people. I cannot tell you the year.

Mr. Shymko: Yes, but you have indicated in your policy, again

referred to by Mr. Bell, that judgements were made on individuals in the past which may seem to be discriminatory and which will have adverse effects on the employees concerned in years to come. Therefore, you say that from today on you will be referring to the future from now on as of January 1, 1979, and that inconsistency will not be applied any more. This is the interpretation and you will not be referring back.

I thought we could find some kind of solution by simply saying: "There is one case which was identical. Give Mr. R his request since it was made before 1979." You are not having a class action because the only identical case--and I do not mean similar, I mean identical--is one individual, who is Mr. R. Give it to him and the problem is solved. Then we will apply your policy definition of 1979. You have no problems and you do not have any class action, as far as I am concerned.

Mr. Philip: Is there a response to that? Is there an answer to Mr. Shymko's question? I do not want to ask my questions until I hear his answered.

Mr. Dymont: Can you summarize the question for me?

Mr. Shymko: What I am trying to say is that item (b) of your policy refers to past judgements and obviously to the 1974 situation, which may be perceived as discriminatory for future applicants as of January 1, 1979. We totally agree with you. I am sure the Ombudsman and this committee will agree with that. There is only one case identical to this one of 1974, and that is Mr. R. Because his case is identical, give him his request, and from now on others, which may be similar but not identical, will not qualify. You are not having any class action, and this becomes applicable and sacrosanct.

Mr. Morin: That is not a question.

Mr. Shymko: Is it possible to grant Mr. R his request, because it is a situation identical to the 1974 one, and not have a class action, because others may be similar but not identical?

Mr. Dymont: In my view, that is not possible. From my experience, which was similar to Mr. R's, I would say that there are many who could have identical histories.

Mr. Shymko: Is it also possible that you can question the other requests and be reinforced by the fact that they may be similar but not identical?

Mr. Dymont: I would have difficulty saying that honestly.

Mr. Shymko: But it is possible to challenge others and it is possible that there may not be a class action?

Mr. Dymont: There are others who worked with Mr. R. Instead of having 23 months to talk about, as Mr. R has, they may have 27 or 19 months. That would be the only difference. I would have difficulty saying those are not identical.

Mr. Shymko: How much would he have to put in to get his pension, \$2,000?

Mr. Dymont: No.

Mr. Shymko: How much would his benefit be to him or a loss to the pension?

Mr. Dyment: Mr. R would have to put in \$848.

Mr. Shymko: And the benefit would be?

Mr. Dyment: The benefit would be \$800 a year at retirement over his life expectancy.

Mr. Bell: How old is he now?

Mr. Drury: He was born in 1928.

Mr. Bell: There are not many mathematicians in here. He is 58 years old.

Mr. Dyment: The other important thing is that while this would gain him \$800 a month more in pension for an \$850 first payment, he could now decide to retire that much earlier; he would have more pensionable service.

Mr. Bell: For \$800 a year?

Mr. Dyment: Right. It is a bonus.

Mr. Shymko: The assumption of this becoming a class action still can be questioned. I am sure there are elements of a class action that may be taken that would not warrant the type of decision because of a nonidentical nature of what we would decide in terms of Mr. R's request. You would be backed up by the policy, by your interpretation, by everything here, including the Ombudsman's office, which would have difficulty supporting other cases. I should not be saying this, but I am just saying that you will resolve the dilemma you are in now if you would accept the recommendations of the Ombudsman.

Mr. Dyment: In my view, we would have a number in the hundreds of cases referred to us which would have extremely analogous histories.

Mr. Philip: You are saying that, and I would like to start off a line of questioning on that. Can you over the lunch break come up with specific figures as to how many people have applied up to 1979?

Mr. Dyment: We cannot tell you, because we have not kept a record of those who have made verbal requests. I can safely say that there were 16 written requests.

Mr. Shymko: At the worst, you may have 16 people.

12 noon

Mr. Philip: If you had 16 written requests and if the committee decided to grant to everyone who had made a formal request up to 1979, can you over the lunch hour come up with a figure as to the exact cost to the company of that award?

Mr. Dyment: We get these figures from our actuary, so I cannot tell you whether we can do it over the lunch hour. It would depend on whether we could get the actuary to--

Mr. Philip: Surely this information would all be computerized.

Mr. Dymont: But we would have to go and get their names and length of service and all this detail that he would want. Also in answer to your question, we have had inquiries from the union representatives. I cannot say how many they are representing. We have said to them: "Hold it. Let us see what happens here."

Mr. Morin: What he is asking is that the people who applied prior to 1979 be recognized and paid. If I understand you correctly, there was a mistake made; in 1977-78 you said, "Okay, we do not want these things to happen again."

Mr. Dymont: Right.

Mr. Morin: "Therefore, let us put a stop to it." Because you had granted an individual the authorization to contribute for his past service, why not, as Mr. Shymko has recommended, grant the same privilege to the others who applied in writing prior to 1979 and forget all the others who applied after 1979? Would that be possible? Would that be considered?

Mr. Dymont: It is possible, but I would like to point out that I have told the union representatives who have asked us for progress on this particular thing: "It is not resolved. If you have people looking for this sort of action, hold it." I do not know how many of those there are, but I would be seen as not living up to a commitment.

Mr. Shymko: But we are talking about written requests made prior to 1979; so whatever they may contemplate is not going to be applicable.

Mr. Bell: Mr. Dymont, I always like to call a spade a shovel. What is implicit in what the gentlemen are saying to you--and you may want to take advice of counsel on this issue over the lunch break--is that you have a situation that is not going to be easy to resolve. We all agree with that. What you want to consider is whether it will be easier to resolve your situation with or without this committee reporting to the House. I cannot be any blunter than that.

Mr. Dymont: It is our view that if our action in this is upheld, we will not have a problem.

Mr. Bell: That is a view.

Mr. Dymont: It is a view is shared by our unions.

Mr. Bell: On the other hand, if you are not upheld and if this committee makes comment as to the interpretations, the policy and the treatment of others versus this gentleman, and it is adopted by the House, the reverse is so.

The third analogy is that the committee says and does nothing but accept a resolution that the parties have come to. The invitation has been given to you and your colleagues to consider it. I guess we cannot ask any more than that you consider it and advise us after the lunch break whether there is any merit in the suggestion.

Mr. Dymont: Could I have a clarification of the suggestion?

Mr. Shynko: The suggestion, as I understand it, is that you would allow the request of Mr. R to go through along with any identical requests that were made to you on paper--in other words, formally--prior to the policy clarification, made for the first time on paper in 1979, as we have seen here. That is all.

Mr. Dymont: Could I ask a question?

Mr. Bell: As many as you like.

Mr. Dymont: I could quickly say yes to that. We are talking about written requests?

Mr. Shynko: Yes.

Mr. Dymont: Somebody then is going to say: "Mr. R was able to get this through appealing to the Ombudsman. Dymont says he is not going to pay mine because the committee referred only to written requests on hand. I am going to write to the Ombudsman." Am I going to be here 349 more times?

Mr. Philip: That is a possibility.

Mr. Bell: It is also a good question. I will let the representatives of the Ombudsman speak for themselves, but they will probably tell you they cannot tie their hands or fetter their discretion by something that may or may not happen.

By the way, I would qualify it further by saying it should be those persons who have made application in writing prior to the date in question and who have not since retired. I have some difficulty, and maybe the pension holders have some difficulty, in reversing a process after a pension vests. It may not be possible to do that; so the numbers may be further reduced by those who have already retired. That is something that perhaps could be detailed out.

As far as this committee is concerned, the committee would have identified a class of persons who, as far as discussion purposes are concerned, were entitled because they actually made an application before the effective date of the policy. It is almost like grandfathering, and if the grandfathering category is closed, the Ombudsman has heard from this committee what its views are on the potential entitlement of others.

Mrs. Meslin, do you want to comment? If all those who applied in writing before and who have not since retired were grandfathered--let us call it that--what would be the Ombudsman's position should entitlement be sought by anybody else in the numbers of employees who had not then applied in writing? What would be the Ombudsman's position on any complaint received?

Mrs. Meslin: I do not know what our position would be, but we would have to accept the complaint and look into it to determine whether it merited our investigation or support if we investigated it.

Mr. Bell: That is what I thought you would say.

Mr. Morin: Am I correct in understanding that we are asking these gentlemen to give us an answer after lunch?

Interjection.

Mr. Morin: In fairness to them, because of the legal implications, do you not think they should be given more time to study that recommendation?

Mr. Shymko: By noon tomorrow.

Mr. Morin: Well--

Mr. Cordiano: I would like to hear what sort of legal ramifications there might be in making that a policy now. That also seems discriminatory.

Interjection.

Mr. Cordiano: Just a moment. I want to hear an answer.

Mr. Shymko: I also have a problem since the policy statement under part (a) refers to a large number of active employees who may be affected. You also mention an undetermined number of employees already retired who could be in exactly the same situation. The problem I see with Mr. Bell's suggestion is when you start saying it is only for active employees, not the retired ones.

Mr. Bell: I see a practical problem with the whole pension plan.

Mr. Shymko: We do not know what numbers there are. It says an undetermined number of employees are already retired and may be in the exact same position. I do not have the figures.

Mr. Philip: An employee is not someone who is on pension; he is not defined under this.

Mr. Baetz: Mr. Chairman, before we continue this further, I suggest that this committee go into a brief in camera session after lunch or whenever. We are getting into something here that I would feel better if I could discuss it a little more frankly with my fellow members in camera.

Mr. Shymko: In support of Mr. Baetz, I would like to know whether there is a reply from Mr. Dymont prior to our making any decisions in camera. I hope that what Mr. Baetz is suggesting--

Mr. Philip: All Mr. Baetz wants to do is discuss it.

Mr. Cordiano: Mr. Baetz is suggesting--

Mr. Baetz: Maybe we are putting Mr. Dymont into an unfair position here too. He has--how many are on your board? You have three union members and three management people?

Mr. Dymont: Right.

Mr. Baetz: I have an idea they might like to have some input in your decision as well. You might get yourself and us into an awkward situation.

Mr. Philip: Could we meet at three o'clock rather than at two?

Mrs. Meslin: If you go in camera after lunch, we would like an opportunity before anything occurs to sum up and to ask some questions on our own. I would like some instruction from the chair.

Mr. Bell: Can I suggest that the committee adjourn now and stay in

camera for 10 minutes or so? It is still early before the lunch break. Mr. Dymont and his colleagues can consider what has been discussed over the lunch break and can come back and give us their response or reaction at two o'clock. We will then see where we go from there. If we still go, then we will finish with the gentleman from the commission and we will give the Ombudsman a chance to respond. Then the committee can go, as it planned to go all along, back in camera to deliberate the matter.

I am putting it on the basis now that there is no more than a suggestion, which has come from at least three members of the committee plus their counsel, as food for thought over the lunch break.

Mr. Philip: We may want to consider having lunch with the Ombudsman's staff.

Mr. Bell: No, I do not think so.

Mr. Chairman: Is the committee in favour of that suggestion?

Interjection: Yes.

Mr. Chairman: Okay. Carried.

The committee continued in camera at 12:12 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
REPORT, COMPLAINT OF MR. R
WEDNESDAY, APRIL 2, 1986
Afternoon Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shynko, Y. R. (High Park-Swansea PC)

Substitutions:

Cordiano, J. (Downsview L) for Mr. Henderson

Epp, H. A. (Waterloo North L) for Mr. Newman

Clerk: Decker, T.

Staff:

Bell, J., Legislative Counsel

Witnesses:

From the Office of the Ombudsman:

Meslin, E., Executive Director

Morrison, G., Director, Investigations

From the Ontario Northland Transportation Commission:

Dyment, P. A., General Manager

O'Connell, T., Counsel

Drury, N., Director, Human Resources

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, April 2, 1986

The committee resumed at 2:13 p.m. in committee room 1.

REPORT, COMPLAINT OF MR R
(continued)

Mr. Chairman: I see we have representatives from all parties. We will resume our hearings.

Mr. Bell: I have a brief announcement. Mr. Dymont, feeling sorrowful for his transgressions this morning, has made a contribution to the committee.

How many cookies did you say you have?

Mr. Dymont: There are 10.

Mr. Bell: There are 10, representing the seven transgressions this morning, and you have a credit of three more besides. They are chocolate chip and will be distributed when we go in camera.

Mrs. Meslin: Mr. Sheppard will not get any because he had a McDonald's hamburger.

Mr. Sheppard: I was at McDonald's. I have done my duty.

Mr. Bell: To refresh our memories, when we adjourned it was on the understanding that Mr. Dymont and his colleagues would confer over the lunch hour and come back and advise the committee of their reaction and response to the suggestions put to them this morning for a possible resolution of this matter. I will not suggest what will happen after that. We should hear now from Mr. Dymont.

Mr. Dymont: As I understand the proposition, we should consider allowing those requests which were similar to Mr. R's and were recorded in writing but that the consideration should not be extended to those who had retired. It was simply those who remain on what we call active status--permanent, temporary or otherwise.

We would, in our view, be inconsistent with our posture all along, which was and is that the regulations are clear to us that this service is not allowable service. It is our preference to maintain that consistency. We feel that should Mr. R be allowed to do this, so should any others regardless of whether or not they had made the request in writing. Our response is negative.

Mr. Morin: That was prior to 1979?

Mr. Dymont: Right.

Mr. Morin: That is what we had asked.

Mr. Dymont: Right. I am sorry. I should have mentioned that.

Mr. Bell: I suggest that the following is required to complete your public consideration of this matter. Any of you who may have any further questions of Mr. Dymont and his colleagues should ask them now. It will give them an opportunity to make any further statements or submissions which they think would be helpful to the committee. We will then ask the Ombudsman's representatives for their response. I understand there may be a couple of questions necessary for clarification. Then you should retire in camera to deliberate the matter.

I have no further questions of Mr. Dymont and his colleagues. Do any members?

Mr. McLean: You indicated that there would be no further giving on your part with regard to prior to 1979. If we did see fit to recommend that this would be possible, would you see that as a cause for any employee to be able to apply for his back pension?

Mr. Dymont: If we had allowed it? Yes, I would see it as a legitimate reason for any employee under similar circumstances to ask for the same thing and almost to demand identical application.

Mr. McLean: Does the solicitor feel that legally they would have a right to apply for it?

Mr. O'Connell: I do not believe they have a right to apply for it under the regulations as they are interpreted by the pension board.

Mr. McLean: You are referring it to the pension board. But in a legal opinion, would you not feel they would have a legal right?

2:20 p.m.

Mr. O'Connell: They are regulated by a pension board which establishes pension regulations, which may be changed only by order in council. This board is comprised of both management and labour representatives. I believe their rights are contractually defined in the pension regulations. My opinion is restricted to the interpretation of the pension regulations.

Mr. Hayes: Mr. Dymont, can you explain why you would treat the person in point 1 on page 1 of the synopsis differently from the person in point 6? You are talking about a person who worked for two years without losing any time at all or without being laid off. You refused that individual. Yet at the same time there is another employee who had some periods of layoff or loss of employment in between. How can you justify treating that one differently from the other? I know you are going to say he was hired for a specific job. My opinion is that the intention might have been to hire him temporarily, but you did take that employee on as a full-time employee without any break in employment. Can you explain that?

Mr. Dymont: Yes. The circumstances surrounding the history of the person in point 1 and those of the person in point 6, as I indicated this morning, are almost identical. We denied number 1 his buy-back, but we allowed number 6 his buy-back. You have to refer to page 3, item 3, of the Ombudsman's synopsis, where we say we made a mistake in allowing some employees to buy back. That is the one employee we were referring to.

Over the noon hour we did some research. I am able to say that in 1953 the pension board treated this identical request and denied it. In 1975 it treated this identical request and denied it, from different people but in identical circumstances. In 1977, it treated this identical request and denied it. In 1979, it came out with the policy that is causing all this controversy, but again denied the request. We have consistently denied requests, except in one case, the one to which you refer. Our position is that one mistake does not create a policy.

Mr. Hayes: You were arguing earlier that if you did accommodate Mr. R, you would have a real influx of other people who would want the same thing. Why did that not happen with number 6, if that is the case? You did not have to allow a lot of other people to do it.

Mr. Dymont: When we allowed the person in 6 to buy back, we immediately were presented with Mr. R's request. I am down to two cookies.

Mr. Bell: There are two cookies left. Do you want to send out to the store?

Mr. Dymont: I may have to.

We were then faced with Mr. R's request, which was accompanied by five others; we immediately got six. We denied them. That put a stop to any further requests. In addition, there is one important point: 1,400 Ontario Northland Transportation Commission employees believe they cannot buy back.

Mr. Morin: They can?

Mr. Dymont: They cannot. They agree with us. The employees do not feel they can buy back. Their union reps agree they should not be able to buy back. We have said, except in one case, "You cannot buy back." I think we have to allow buy-back to get an influx.

Mr. Hayes: There was a lot of talk about the interpretation of temporary, casual and all this. You have to admit that this individual, regardless of what title you put on him, was a full-time employee in May 1957. Even though you hired him thinking it was a temporary position, you kept that person on as a full-time employee. That is the way I look at it.

Mr. Dymont: There is no dispute on our part that this man was employed in 1957. His employment has been continuous since that date. We do not dispute that fact.

Mr. Morin: Is the person who made that request and who had it granted still alive?

Mr. Dymont: Mr. R?

Mr. Morin: No, the person whose request was granted.

Mr. Dymont: Mr. B?

Mr. Morin: Mr. B or Mr. X.

Mrs. Meslin: The 1974 guy.

Mr. Dymont: He is.

Mr. Morin: Would you consider it fair to go back to that individual and say, "We have made a mistake," and to return to that person whatever contribution it was--18 months or two years--with no penalty, and say, "From now on your pension is going to be calculated as if you had not contributed, in order to be fair with everyone." Do you follow me?

Mr. Dymont: Yes. That is a consideration. In a letter to the Ombudsman, we said that is an alternative and we would consider going back and reversing them. However, the reason we have not done that is I do not think that will help Mr. R.

Mr. Morin: No, but you are being fair to and consistent with everyone.

Mr. Dymont: That is true.

Mr. Morin: If you authorize that person to have that privilege and you say, "No, we cannot consider the people prior to 1979," then you are being unfair to those people.

Mr. Dymont: To correct a situation, we should reverse the wrong. If that seems to be a reasonable approach, then we can do it.

Mr. Hayes: Then you would be back here again.

Mr. Dymont: I firmly believe Mr. R does not know whether he is going to be successful or not. Mr. B has been successful. Mr. R is faced with potential disappointment or euphoria, depending on how this goes. He has two choices. Mr. B does not know that he is even involved. If we were to reverse that, Mr. R will get one of the choices with which he is faced and Mr. B will be awfully upset. I think we would be worse off. However, we could do that if that would correct the wrong and make us consistent.

Mr. Morin: Obviously, you did only one wrong.

Mr. Dymont: We did one wrong.

Mr. Morin: Which affects 2,000 people.

Mr. Dymont: That is correct. We thought it best to say: "We were wrong. Let us admit we were wrong. Let us not do it again." We thought that was the more judicious approach than going back to the guy and saying, "We have to reverse it."

Mr. Bell: You have not said, as a matter of policy, that you will not permit some employees in the future to buy years of service for pension purposes, have you?

Mr. Dymont: We have not said that, no.

Mr. Bell: As a matter of fact, the policy at page 40 contemplates circumstances wherein the board will permit the purchase to be made.

Mr. Dymont: May I say we are aware of the circumstance that will happen in the future in which we would do it.

Mr. Bell: Yes. For general purposes, you have given us one example of the permanent temporary, the guy who is on for seven months. I presume there are three classes of employees that will be entitled in the future to purchase: the permanent permanent, the permanent temporary and the permanent casual.

Mr. Dymont: That is correct.

Mr. Bell: You have drawn the line at those current employees who, as of 1978, numbered 335. Is that correct?

Mr. Dymont: That is correct.

Mr. Bell: The line you have drawn is current versus future. You have turned down this man because he does not come within your definition of permanent and any of the three subcategories. Is that correct?

Mr. Dymont: I would modify it to say within the definitions of permanent that I can find in these documents--it is not mine--and there are 14 different definitions.

2:30 p.m.

Mr. Bell: Whatever the definition you want, we have to look to the policy. You say there are three classes of permanent employees. You say that for the two years in question, this man does not come within any of those three classifications.

Mr. Dymont: Exactly.

Mr. Bell: I am not clear on the 335 current employees referred to in the policy. Were those individuals, of which this complainant is one, all classified as temporary for the early years of their employment relationships?

Mr. Dymont: Yes.

Mr. Bell: They are all in that temporary category.

Mr. Dymont: Yes, including me.

Mr. Bell: Are you one of the temporaries?

Mr. Dymont: That is right.

Mr. Bell: If there were not 335 but only one, Mr. R, would you still have the same problem? In other words, eliminate the money implications.

Mr. Dymont: We would have the same problem.

Mr. Bell: What would your problem be?

Mr. Dymont: We would have two, Mr. B and Mr. R. To grant their requests, we would have to defy what we feel is a valid interpretation of the regulations.

Mr. Bell: You would still be confronted with his classification versus your interpretation of what "employee" means, under either the regulations or the policy.

Mr. Dymont: That is correct.

Mr. Bossy: I want to get something clear. How long have the northern employees been under a union contract?

Mr. Dymont: Do you mean in the Ontario Northland Transportation Commission?

Mr. Bossy: Yes.

Mr. Dymont: I cannot answer when they first became unionized. It was whenever the railways did, and I suspect that was in the first half of the century. The most recent is about 1968. Perhaps somebody else can comment on how long railways have been unionized.

Mr. Drury: I cannot comment on all unions, and I am not saying that this was the earliest.

Mr. Bossy: I am not looking at all railways. I am saying this group of employees.

Mr. Dymont: Do you mean Mr. R's group?

Mr. Bossy: Yes.

Mr. Dymont: Did it become unionized in 1964?

Mr. Drury: It was in 1966. However, the extra-gang employees to whom we have alluded here had a collective agreement which was effective on May 1, 1917. I am not sure if that was the first one.

Mr. Dymont: That is another group.

Mr. Drury: I do not think they were the first. I think our operations people, the trainmen and brakemen, were before them, but certainly it was 1917 for the maintenance workers.

Mr. Bossy: The reason for asking that was, in looking back, we see that policy and those regulations. You say regulations go back to the 1930s.

Mr. Dymont: They were first created in 1939.

Mr. Bossy: In negotiations of all contracts there must be discussions concerning pensions.

Mr. Dymont: There certainly are.

Mr. Bossy: With my knowledge of negotiations, I know that has happened.

We look at Mr. R having started in 1957. The regulations concerning pensions have not been changed, according to what I understand.

Mr. Dymont: Yes, they have been changed.

Mr. Bossy: It has been by very little.

Mr. Dymment: We have had significant changes over the years, but not in this area.

Mr. Bossy: That is not written into the regulations that govern this group of employees.

Mr. Dymment: Yes, it is.

Mr. Bossy: Further to that, the policy that must have developed or was there in 1957, if it was a change such as what we read here as policy, changes the system of dealing with it.

I am trying to get at how a decision in 1974 was made to accord a buy-back to a person under a certain set of regulations or policies. That policy then must lend itself to being able to do that or you would have been able to read very clearly in the regulations that it could not be done. This policy was drafted to try to clarify it but I think it muddies the waters as we have heard here today. I am having some trouble with that.

There must have been a policy in 1974 when that person was accorded a buy-back because that is just not done. It was unique, and you said there is only one at stake which ends up to be the serious one. It must have been done on the basis of someone making a decision on existing regulations or policy to accommodate that. Since that time, the only thing I know of that has changed is the direction of the board in regulations not to let this happen again. We have not seen a written interpretation except for that regulation but no policy prior to 1979. It seems strange that there was no policy in a written form. We get it here, but there is a grey area.

Mr. Dymment: When we have regulations or contracts, they may say that we pay somebody 25 cents an hour to work for us. We do not issue a policy. There is clarity; there is no ambiguity. A policy would be written to alter that or to clarify it. All we can say is that this situation you are talking about, Mr. R--

Interjections.

Mr. Dymment: Can we buy a group plan?

Mr. Bell: You can buy in.

Mr. Dymment: In March 1953 there is a minute from a pension board meeting where seasonal extra-gang labour, which really is the same classification as Mr. R, asked for admission to the pension plan. In 1953, it was decided they could not be considered to qualify as being on the permanent staff as provided in regulation 1(c). As early as 1953 we have a record of people of this nature applying and being denied for the same reasons we are now citing.

We have another one that we were able to dig up at noon. In 1975, the same thing was denied. We have another one in November 1977, where Mr. R and five colleagues were denied. There was not a policy but the record will show that they were consistently denied. We did not need a policy; we were applying the regulations.

Mr. Bossy: Except for 1974.

Mr. Dymont: We made one mistake. We say one mistake does not create a policy, nor should it alter the policy which was consistently applied.

Mr. Shymko: May I ask a supplementary to that? You call this a mistake. It is hard for me to understand how an administration and the employer have gone through a series of requests in the past which were denied. I am sure someone who asks for a payback after six years of your temporary employment, whatever you may call it--casual, intermittent--was given this privilege.

I am sure there must have been consultation; there must have been some fallback on criteria and some policies. You must have looked at other precedents which may or may not have been set before you made the decision in 1974. But today, before this committee, to casually dismiss it with a simplistic statement, "It was a mistake," is hard for me and for the members of this committee to accept. I am sure you are a very responsible administration with responsible staff in a very important institution. I want further clarification from you to substantiate that this was a simple mistake.

2:40 p.m.

Mr. Dymont: For the life of us, we cannot explain why the board allowed that one request. We do not know. Unfortunately, those people are not here today. They were not here two years ago, with one exception. That one exception could not give us a good reason. We do not know.

Mr. Shymko: You do not know. Are there communications or letters? One applies with a request on paper. I am sure there must have been correspondence and minutes of the meetings of the board.

Mr. Dymont: We have them.

Mr. Shymko: You have these minutes. Is it possible you may have looked at the minutes of those pension board meetings prior to coming to this committee?

Mr. Dymont: We turned them over to the Ombudsman.

Mr. Shymko: Did the Ombudsman's office see the minutes of the pension board meetings while it was discussing the 1974 permission to allow the individual to buy back his pension for the six years?

Ms. Morrison: For 1974?

Mr. Shymko: We are talking about 1974.

Ms. Morrison: I do not have them here. I do not have them available right now, but I believe we reviewed all the documents when we investigated the case.

Mr. Shymko: You must have found some rationale explained by the pension board.

Ms. Morrison: I believe the minutes just say the request was granted.

Mr. Shymko: They do not rationalize the reason. You have set up a precedent that is creating problems for all of us today. I am sure you admit

that. We are trying to find a solution, because if this committee proceeds in the way we may proceed, namely, to go to the House and the members of the Legislative Assembly, and demand backing for the recommendations of the Ombudsman's committee, you will end up with more than \$1 million and 300 people. We are trying to be fiscally constrained, responsible and conscientious and at the same time provide some justice.

The financial aspect has been mentioned on a few occasions in your comments and in answers to questions. I cannot imagine our court system or our justice system denying justice because of the monetary amount of a just compensation for justice denied. Compensation and the implications have no bearing when one speaks per se in absolute terms about justice and justice denied and precedents set.

I question whether the whole semantic debate on capital T temporary and small t temporary or capital P permanent and small p permanent would stand the type of recognition you may even have had here in committee when this is debated by the members of the Legislature. We were trying to look for some solution. I apologize I was not here at the beginning, but I understand there was no consensus to any form of agreement.

I looked at the 1974 decision. It is creating problems as well as a semantic debate on permanent and temporary employment. I appeal to you: In weighing the eventual cost of what you may term as a class action as one option, or resolving it with some fiscal responsibility in saving money and at the same time providing justice where justice was denied with a grandfather clause, which was suggested, have you categorically dismissed that option? When we deliberate in camera, should we not consider that at all? Have you told us to shut out that option completely? Are you saying this to the committee?

Mr. Dymont: If we allowed Mr. R to buy back, it would be inconsistent with and in violation of our interpretation of the regulation. If we were to do that in this case, we feel that as good managers and as responsible managers we would have to do it in every case that is the same. There are 335 of them. Regardless of the number, regardless of the cost, it is irrelevant. We would have to violate a regulation, and it is our decision that we should uphold the regulation.

Mr. Shymko: Do you feel that way even if the deadline of January 1, 1979, which you maintain as policy, is that turning point of interpretation?

Mr. Dymont: No, we do not maintain that.

Mr. Shymko: If you are now saying you do not maintain it, why did you put it on page 40 in the regulations in the first place? Why did you set up that line? Why did you speak about judgements in the past? Why did you say, "In an effort to avoid these situations, the following practice will be adopted, effective January 1, 1979?" All of a sudden you set a date. If it is the same policy as it was in the past, as it is now and will be in future, why go through this charade of all these (a)s, (b)s, subsections and dates?

Mr. Dymont: I read a minute where the board said the same thing in 1953 that it is saying there, "Deny those." In 1974, 1975 and 1977, it said the same thing. If you read section (a), all it is saying is, "Deny those." The board has not changed its approach to Mr. R and similar situations.

Mr. Shymko: I do not read it that way. Something happened. On May 12, 1978, you decided to go with a policy statement and it was a turning point; that is the impression we have been given. That option is shot. In other words, you do not give us any options.

Mr. Dyment: I would like to refer you to that page you were talking about under section (a).

Mr. Bell: Is that page 40?

Mr. Chairman: Mr. Bossy, have you concluded your remarks?

Mr. Bossy: Yes.

Mr. Hayes: I would like to make a comment on what Mr. Shymko was saying about the decision in 1974. I do not believe that was a mistake. I suggest the pension board probably granted the request of employee B at that time because it felt it was the fair and just thing to do for that person.

Mr. Bell: Mr. Dyment and your colleagues, is there anything further you would like to add which you think may be of assistance to the committee?

Mr. Dyment: By way of overview, Ontario Northland is a conglomerate of small but very different enterprises that are charged with running ferry boats in the summertime, so there are seamen's unions; we run airline enterprises with employees and the characteristics of the airline business; and we are in the railway business and have to have some degree of consistency with the other railways in Canada. We are also in bus lines.

As an example, if someone is employed on a bus line, he has to make 120 tours before he is a permanent employee. How can we apply something consistent with the airline business and telecommunications, which in terms of technology and leading activity is probably the most modern in Canada, with modern unions going along with it? How can we create job classifications that apply to an electronics engineer that would be applicable to a guy running the caboose of a train? You cannot. That is where there is this confusion.

It is difficult, if not impossible, to homogenize all these employee considerations and say, "Ontario Northland hires people and they are permanent, temporary or whatever." There are too many circumstances. We have some people whose work season is the winter and others whose work season is the summer.

With each labour union, we have to determine what people are. Labour unions do not agree with each other, let alone with us. We have an amalgam of definitions. That is why it is difficult for me to explain to this committee what we call permanent, and why there are things like permanent permanent and permanenttemporary because we were forced into it by trying to homogenize what the employees are, whether they are on a ship on Georgian Bay or running the Polar Bear Express excursion to Moosonee.

2:50 p.m.

It is difficult. As I said this morning, it is not a simple issue we are talking about.

Mr. Sheppard: Mr. Dyment, would you not have jobs that would be permanent part-time?

Mr. Dymont: Yes. We call it permanent casual. Some people call it permanent part-time. Telephone operators work four hours today and perhaps three hours on Friday.

Mr. Sheppard: Would the permanent part-time be paying into the unions?

Mr. Dymont: I would have to go to their contract. I am familiar with that contract. They actually add up their hours. When the hours total 127 days, they are considered permanent. They can buy back into the pension.

Mr. Sheppard: How many years have you been with them as general manager?

Mr. Dymont: Four as general manager.

Mr. Sheppard: Did you come from the bottom up?

Mr. Dymont: Right.

Mr. Shymko: Was the identical case in 1974 the only one, the only mistake?

Mr. Dymont: Yes, it is the only one of which we are aware.

Mr. Shymko: If it is the only mistake, why is it that on page 40, section B of your policy statement, you say the following, "It was recognized that the judgements which may have been applied to individual situations by boards and administrative staffs over the years since the inception of the pension plan might be construed as discriminatory with adverse effects on the employee concerned in years to come."

You obviously make plural references to a number of pension boards which have made a number of decisions to a number of cases.

Mr. Dymont: Right.

Mr. Shymko: Second, apparently there was a conclusion reached by the Ombudsman's office when, in the synopsis it provided us with, it says: "In 1974, prior to complainant's first request, several employees had made similar requests to the pension board. Some of these employees have been permitted to make contributions to the pension fund for their earlier noncontributory service."

I want to ask the Ombudsman's office first, was it its understanding that the case in 1974 for this one individual was not the only one?

Ms. Morrison: It is our understanding that this is the only one of identical circumstance.

Mr. Shymko: What about similar circumstances, not identical?

Ms. Morrison: We understood there had been other requests which had been granted. We do not understand them to be identical to that of Mr. R.

Mr. Shymko: But other requests had been granted which may have been of a similar nature but not identical?

Ms. Morrison: That was our understanding.

Mr. Shymko: Did you go sufficiently enough through the records to come to the conclusion that this is the only one, that there were no other identical ones?

Ms. Morrison: This is the only one we could identify as having exactly the same circumstances as those of Mr. R.

Mr. Shymko: But you could have had names and cases of others that may have been similar over a number of years.

Ms. Morrison: We did not find any that we could identify as exactly this case.

Mr. Shymko: By point 5 of the synopsis, are you misleading us as a committee or are you telling us that similar requests were made and employees had been permitted? You mention employees had been permitted to make contributions. Are you misleading the committee by saying that?

Ms. Morrison: My understanding was that other employees had been permitted to make contributions but none had the specific problem that Mr. R had except for the one we cited in number 6.

Mr. Shymko: Were these employees that were temporary?

Ms. Morrison: They were not that exactly, as I understand it.

Mr. Shymko: May I ask you, Mr. Dymant, about the plural form of part B of your policy statement?

Mr. Dymant: No problem. There is Mr. P and there are eight of these people. They are not similar at all to Mr. R.

Mr. Shymko: There were Mr. P, Mr. R and the other seven--you mentioned eight in addition to Mr. R--where apparently judgements were made which could be construed as discriminatory.

Mr. Dymant: No, sir. Mr. P and Mr. S, as an example, both failed to meet the original medical requirements of the pension plan. They subsequently were re-examined and met the medical requirements, so they were allowed.

Mr. Shymko: The medical problems were with Mr. P. What about the other eight?

Mr. Dymant: We also have Mr. J. That is two. He entered service in the car department in North Bay as a permanent employee and through either a supervisory or administrative error did not begin contributions until July 1953. In 1975, the board allowed a buy-back because it was an administrative error. I can go on.

Mr. Shymko: Keep going.

Mr. Dymant: Mr. S, Mr. F, Mr. H and Mr. K were relieving telegraph operators. They were permanent positions. They had temporary work assignments. They were obviously permanent people and were allowed to buy back. They fit the definition.

Mr. Shymko: What were their jobs?

Mr. Dyment: They were relieving telegraph operators. There was no doubt.

Mr. Shymko: They were part-time, sort of casual.

Mr. Dyment: Yes, like an engineman on a train.

Mr. Shymko: It was intermittent.

Mr. Dyment: Permanent, casual or intermittent, whatever you want to call it.

Mr. Shymko: However, you call them permanent.

Mr. Dyment: The regulations call them permanent; so we said there was no doubt about that in each of these cases.

Mr. Shymko: They are permanent, but it is different from Mr. R.

Mr. Dyment: That is right.

Mr. Shymko: You never called Mr. R permanent.

Mr. Dyment: No, sir.

Mr. Shymko: Were these people employed before the 1979 policy statement?

Mr. Dyment: Yes.

Mr. Cordiano: That was because you designated them as permanent.

Mr. Dyment: No, the books did.

Mr. Cordiano: That is what I mean, the rules.

Mr. Dyment: The rules did, yes.

Mr. Cordiano: That does not change this.

Mr. Shymko: With the vagueness of the definition, your interpretation and so on, one can call them whatever one feels like.

Mr. Dyment: I do not think so. The books are pretty precise.

Mr. Shymko: In other words, nobody except Mr. R is unique.

Mr. Dyment: None has been drawn to our attention. We provided our records to the Ombudsman's office.

Mr. Morin: I understand there are union members on the floor.

Mr. Dyment: Yes.

Mr. Morin: Did Mr. R ever approach his union and ask someone in the union to defend his case?

Mr. Dymont: Yes.

Mr. Morin: Did they consider that?

Mr. Dymont: Yes.

Mr. Morin: What was the solution? Was the answer no?

Mr. Dymont: He approached his member. He also dealt through a lawyer. These efforts were simultaneous with the Ombudsman's processing. At one point, we were dealing with it from four angles.

Mr. Hayes: What is the ratio between management and nonmanagement people on the board?

Mr. Dymont: It is three and three. It is equal.

Mr. Hayes: Plus a chairman?

Mr. Dymont: A neutral chairman is jointly selected.

Mr. Baetz: You say Mr. R dealt through his member. Do you mean his member of the union or his elected member or what?

Mr. Dymont: His provincial elected member.

Mr. Baetz: Mr. R obviously belongs to a union today.

Mr. Dymont: Yes.

Mr. Baetz: What is the stand of the union on Mr. R's position today?

Mr. Dymont: The union has consistently agreed with our denial.

Mr. Baetz: Has the union consistently agreed with your decision?

Mr. Dymont: Without exception.

Mr. Baetz: In the case of Mr. R.

Mr. Dymont: That is right, and the unions are recognizing that this is their interpretation of the regulations as well. They would like to negotiate some sort of buy-back at the next round of negotiations. They are recognizing that this is not automatic. It is on a list of items to be negotiated.

Mr. Baetz: You would express to this committee that if the committee were not to rule in favour of Mr. R, the union would say, "That is fair enough;" or would the union say: "Hey, wait a minute. There has been a bit of injustice here?"

Mr. Dymont: I am sitting here as one of the members of the board and I am representing three union people. They are with me on this one.

Mr. Baetz: Was this in writing anywhere? I imagine that you as the chief executive officer have had correspondence with Mr. R's union.

Mr. Dymont: Yes, we have.

Mr. Baetz: Is there anything in that correspondence you think might be useful for the committee to hear?

3 p.m.

Mr. Dymont: I do not know offhand, but I could certainly go back through the file and find out. They are represented on the board by a union member and I think it would simply be a matter of saying, "Record your position."

Mr. Epp: By implication here, the inference is that the union representatives agreed with you on this. At all times when this case was discussed, it was a unanimous decision to deny Mr. R his pension?

Mr. Dymont: That is right.

Mr. Epp: It was unanimous at all times?

Mr. Dymont: It was unanimous. That is recorded.

Mr. Epp: What were the implications for the union if the union was to take a different position on this?

Mr. Dymont: In general, unions want to improve pension-related matters. They recognize that buy-back is not allowed by regulation and they have other things ahead of buy-back as their priority. We can only afford to make certain monetary concessions. If they were to push buy-back, they would have to shelve some other requests. I do not think they are willing to do that.

Mr. Epp: As far as the union was concerned, it was in its interest to make this decision unanimous because it would then have to rearrange its priorities?

Mr. Dymont: No.

Mr. Epp: It would reprioritize its particular situation? Is that what you are saying?

Mr. Dymont: The union members interpreted the regulations as they were. That is the way they feel. In the negotiating, I do not think the unions--this is all 14 now--would push us to allow Mr. R's request because it would compromise exactly what you said.

Mr. Epp: Compromise their prioritization?

Mr. Dymont: Yes. In negotiating with us, the unions want other things before they want this. An employee with the Ontario Northland Transportation Commission contributes to the pension plan for 35 years and no longer. They may have 35 years in when they are 55 or 56 and they can work for another 10 years without contributing. This would allow them to buy back and perhaps terminate the 35 years earlier, but the unions' position is: "So what? There are other things that are much more important than that."

Mr. Epp: I understand the situation. Thank you.

Mr. Shymko: I want to go back to others beyond this one individual. In your letter of February 22, 1984, to the Ontario Ombudsman, attention T. P. O'Connor--

Mrs. Meslin: What page?

Mr. Shymko: It is page 16 of our notes. In the fourth paragraph you make statements with regard to a letter received on January 25. You are responding to that letter, saying: "Third, it states that another employee in very similar circumstances was allowed in 1974 to buy back employment. That is also correct. Some seven or eight others were also allowed to do it at the same time." When you made that statement that "some seven or eight others were also allowed to do it at the same time," did you attach the qualifier you are attaching now, that they were not similar?

Mr. Dyment: We turned over the actual files to the Ombudsman's representatives so that they could make their own judgement, which I suspect they did.

Mr. Shymko: In the letter of January 25, the Ombudsman's office does not even mention anybody else except the one case. You volunteered that information on your own in your letter of February 22.

Mr. Dyment: Yes, I know.

Mr. Shymko: You substantiated the fact that there were others in the same situation as this gentleman. To someone reading the letter, you are volunteering information, saying: "Sure, we allowed it in 1974 for this employee. As a matter of fact, we have allowed it for seven or eight more." You have allowed it for more than one.

Mr. Dyment: I explained those seven or eight to you. Two were medical.

Mr. Shymko: You are still making a distinction on the basis that this is unique.

Mr. Dyment: Yes.

Mr. Shymko: Throughout the years that Ontario Northland has existed, there is no one who can be compared, who really received the same privilege as that one mistake.

Mr. Dyment: There were 300 others. None of them applied or very few of them applied.

Mr. Shymko: Of those who applied there was only one who was not denied?

Mr. Dyment: Right. All the rest were denied back to 1953. In every case the denial has been made. It has been recorded in minutes. One was allowed, and we are saying that one should establish a policy.

Mr. Shymko: Your pension board meetings, minutes and so on do not state why.

Mr. Dyment: Why they were denied?

Mr. Shymko: Why this one was not denied.

Mr. Dyment: No. We have given it to the Ombudsman's representatives. We have it. I can show it to you.

Mr. Shymko: I am trying to beat a dead horse. I am going to give up now.

Mr. Dymant: Quite frankly, as you can imagine, when we discovered this case, we said, "Why did the board do it?" We tried to rationalize it. I think you are right. At the time, the board felt it was the proper thing to do. Subsequently, the board realized what it had done.

Mr. Shymko: It is interesting that although you have an equal distribution of union and management on the board, for some reason, there is a great interest by the unions, both members and union leaders of all the union affiliates, in the deliberations of this committee and in something where they feel justice may not have been done. They may even be negotiating grandfathering clauses, retroactive payments and so on.

There is a strong feeling something is not fair, which may not necessarily be reflected by the three people on the pension board, but surely there is an interest that something should be done. I would like to hear whether some of the union representatives, those who are interested in the deliberations of this committee, would share the definition with you.

Mr. Dymant: Right.

Mr. Baetz: On page 17 in our book, in the third paragraph of that same letter you wrote, you refer to one case where a mistake was made, but in that paragraph you are referring to similar mistakes. You say, "The fact that Mr. B and a few others were allowed to purchase buy-back does not make it proper." Then farther on in that paragraph, you say: "There was simply a temporary excursion, wrongly, from propriety. It was felt, however, because B and a few others were allowed to do so, to now deny them that ability and reverse the decision just to keep the record clean does not seem appropriate." Did you make a few mistakes or only one mistake?

Mr. Dymant: It was one that we know of.

Mr. Baetz: Then I am a little confused by that paragraph.

Mr. Dymant: That was in 1984. At that time, Mr. R's case was brought to us as an example and it was said there were others. We said: "There were others. We made some mistakes." Then when it got serious, we started researching it.

Mr. Baetz: Then you found there was really only one.

Mr. Dymant: That is right.

Mr. Baetz: This paragraph is really redundant or it is out of date.

Mr. Dymant: It is not quite accurate. At the time, our approach was, yes, we did make mistakes.

Mr. Morin: As a member of the board, is it your opinion the unions would consider rescinding the decision and reversing the arrangement that was allowed to the two? Would they accept that? I know you cannot speak for the union.

Mr. Dymant: No, I really cannot.

Mr. Morin: Before you wrote this letter to the Ombudsman, surely you discussed this matter with the board.

Mr. Dymment: We did.

Mr. Morin: Members of that board are members of the union. It accepted one of those proposals, but you did not opt for that one. You opted for the third one. We did not consider that.

Mr. Dymment: I really cannot speak for them. They supported the position we took. A lot of their counselling comes from their colleagues at CN and CP, which have very similar plans.

Mr. Bell: Mrs. Meslin and Ms. Morrison, I invite you not to say anything. If you feel you must, by all means, but I think the committee has heard probably as much as it needs to hear, deserves to hear or whatever. Having said that, there is a timing problem for some of the members who have flight connections to make. The committee wants to retire in camera to deliberate this in whatever time is available. Unless it is something you think is absolutely necessary to assist, we would like to cut it off.

Ms. Morrison: Can I make a couple of very brief points? I will not summarize. I will just note that we have had a fair amount of confusion between collective agreements and the regulation here. Legally speaking, of course, the definitions, permanent, temporary, etc., in the collective agreements are not part of the regulation.

The other thing we should note is that we did hear from Mr. Dymment this morning about other employees who could benefit from their interpretation of this policy. Included among those other employees were people, for example, who from what he said might work one day a week for seven years or something. That person will be allowed to take advantage of section (b)(iv) and purchase or make his pension retroactive, whereas someone in the position of Mr. R will not.

It seems to us that even if the interpretation of the regulation and policy argued for by the commission is correct, it is very unfair. I think the cost argument should be looked at very carefully by the committee. If you are to be persuaded that this is a class action, you will have to ask for information that is persuasive on the point of cost. That is all I have to say.

Mr. Bell: Are you persuaded it is a class action? What is your information?

Ms. Morrison: I am persuaded that there may be other requests. I am not persuaded that the cost has been established. Many people who could request may not be able to afford to take advantage of such an opportunity. Many may not wish to.

Mr. Bell: Do you have information that many will, though?

Ms. Morrison: We have no information that suggests many will. Mr. Dymment had suggested everyone will.

Mr. Epp: On a point of short clarification, are you saying that some of those 300, regardless of the decision here, may get pension benefits under another section? As you have said, they have worked one day or something like that for seven years.

Ms. Morrison: No. There I was referring to the people whom Mr. Dymont called permanent temporary, permanent casual or permanent intermittent. He says those people are covered by this. For example, his trainman, whom he calls permanent and who therefore comes within this, could have worked for seven years on a very temporary basis.

Mr. Epp: They are outside that 300 figure?

Ms. Morrison: That is right. Those are other people.

Mr. Bell: If that is it, I would like to thank Mr. Dymont, Mr. O'Connell and his colleague for assisting the committee and Ms. Morrison and Mrs. Meslin as always. Mr. Dymont, you are going into the committee hall of fame. You have established a new record for a single day. Again, thank you for your assistance.

Mr. Chairman: The committee will now go on in camera.

The committee continued in camera at 3:13 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ORGANIZATION

REPORT, COMPLAINT OF MR. F

REPORT, COMPLAINT OF MR. R

TWELFTH REPORT

THURSDAY, APRIL 3, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Baetz, R. C. (Ottawa West PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shynko, Y. R. (High Park-Swansea PC)

Substitutions:

Cordiano, J. (Downsview L) for Mr. Henderson

Ferraro, R. E. (Wellington South L) for Mr. Morin

Clerk: Decker, T.

Staff:

Bell, J., Legislative Counsel

Witness:

From the Office of the Ombudsman:

Meslin, E., Executive Director

From the Hansard Reporting Service:

Grahame, E., Reporter

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, April 3, 1986

The committee met at 10:08 a.m. in committee room 1.

ORGANIZATION

Mr. Chairman: I see a quorum. We shall begin our deliberations and call on our counsel, Mr. Bell.

Mr. Bell: There are two items left on the agenda: one is the matter in the committee's 12th report that has to do with detailed summary number 3 in the Ombudsman's 11th report. It is a recommendation-denied case that members did not support. I would like to defer further consideration of that until Mr. Hayes is here.

Todd is now handing out to you a memorandum from Eleanor Meslin to the committee with respect to a misunderstanding that has arisen, not as a result of anything Mr. Hayes did. He raised the matter for clarification, and we were thinking of another case a month or two ago when we gave the clarification.

The other matter on the agenda is the completion of your 13th report. It is complete except for the part in the report reserved for comment on the Freedom of Information and Protection of Privacy Act. The subcommittee met this morning on that topic and the text of that part of the report will be determined by what the subcommittee reports and what you decide on that.

I propose that we deal with that one first since Mr. Hayes is not yet here. Before doing that though, is it the committee's wish that the results of yesterday's deliberations on the two recommendation-denied cases be announced now, or do you want to reserve that until the report is tabled? It has been the practice in recent years when you have been able to reach a decision relatively soon after considering the matter to announce it publicly, permitting the Ombudsman to follow up quickly with the governmental organization to have the recommendation implemented. I am in your hands.

Mr. Philip: Let us announce it now and get it over with.

Mr. Chairman: What is the decision of the committee?

Mr. Sheppard: What is the point of holding back on the decision? If we have made a decision, why not give it out?

Mr. Chairman: Is the committee in favour of giving out the decision?

Agreed to.

Mr. Bossy: The decision has been made.

Mr. Chairman: Proceed, Mr. Bell.

REPORT, COMPLAINT OF MR. F

Mr. Bell: Concerning the special report involving the complaint of

Mr. F, this is the Ministry of Health matter and Mr. F's complaint is that the ministry refused to permit him to transfer Ontario health insurance plan billing privileges from one area, Millbrook, to another municipality, Belleville.

The committee considered and heard the very full presentations made by the Office of the Ombudsman and by representatives of the Ministry of Health and considered carefully all the documentation that was provided to it in respect of this complaint in the Ombudsman's report. The committee has decided to accept the recommendation of the Ombudsman and will so report that with its own recommendation to the House at the earliest possible moment.

I do not think anything further has to be said at this time about that case.

Mr. Philip: In so doing, we are not necessarily passing any judgement on privatization or deprivatization as a policy.

Mr. Bell: That would be in the report.

REPORT, COMPLAINT OF MR. R

Mr. Bell: The next one, Mr. R, is the matter involving the Ontario Northland Transportation Commission and Mr. R's complaint that he has not been permitted to make contributions for pension purposes for a portion of the first two years of his employment with the commission.

The committee heard and considered the very full representations made by the Ombudsman's office and by representatives of the commission and considered very thoroughly the documentation that had been provided to it respecting the complaint in the Ombudsman's report. The committee decided to support the recommendation of the Ombudsman in this case and will so report that with its identical recommendation in its next report.

In supporting the Ombudsman's recommendation, the committee wishes to say at the earliest possible moment that in its report it will not be making comments on or giving opinions on the interpretation of the relevant sections in the regulations or the relevant policy formulated by the board in 1978. The committee's decision to support the Ombudsman's recommendation is on the merits of the complaint only and is not to be taken as having any application to or precedential value for any other case.

Quite simply, the committee intends to limit the effect of its decision to the circumstances of Mr. R and, accordingly, will not be giving any reasons in its report concerning its decision. That is all, Mr. Chairman.

Mr. McLean: Mr. Chairman, as you are aware, I had to leave yesterday and I was not here at the end. I presume the committee made its decision at the end of the day on the recommendation of its solicitor.

Mr. Chairman: It was a unanimous decision by those who were here.

Mr. McLean: On the solicitor's recommendation?

Mr. Bell: I have never been put on the spot before. Let me say that counsel endorses wholeheartedly the decision of the committee.

Mr. Philip: Both decisions of both cases were unanimous.

ORGANIZATION

Mr. Chairman: Now we have the estimates for this fiscal year. That is the next thing we should discuss. Todd, do you want to explain what is going on here?

Clerk of the Committee: The estimates before you include the fairly routine and standard items that this committee has traditionally included in its budgets. The only other item added this year is provision for a trip to northern Ontario in September, which the committee previously agreed to take. I have made budgetary provision for that. It is a rough estimate, but I think we should make the estimate now and get approval for funding from the Board of Internal Economy to ensure that the trip can go ahead. Other than that, it is very standard and routine.

Mr. Bell: Todd, does the part of the budget dealing with travel include you and me?

Clerk of the Committee: Yes.

Mr. Bell: That is all I wanted to know.

Mr. McLean: It is the smallest part.

Clerk of the Committee: Yes. It is the smallest part.

Mr. Bell: We could go in the baggage compartment.

Mr. Chairman: Can we have a motion to accept this and present it to the board?

Mr. McLean moved, seconded by Mr. Bossy, that the 1986-87 budget of the committee in the amount of \$83,594 be approved as presented and the chairman authorized to present the budget to the Board of Internal Economy.

Motion agreed to.

12TH REPORT

Mr. Bell: Can we turn to the matter of Mr. O in the committee's 12th report? Mr. Hayes raised this matter at the end of February when you last met. I will wait until you all have the material in front of you and then give some background. Members will have to rely on Ed Philip, Howard Sheppard and me for background because we are the only people in this room who were privy to the committee's deliberations, etc., which gave rise to its report on this case.

In any event, this case is reported at pages 20 and 21 of your 12th report. I do not know whether you have it before you.

Mrs. Meslin: They should have excerpts of the relevant part of the report.

10:20 a.m.

Mr. Bell: Even if you do not, it is not long. Why not let me read it and then I can make comments from my perspective? Dealing with detailed summary number 3 in the Ombudsman's 11th report, the report was addressed to the Ministry of Government Services and, particularly, the Public Service Superannuation Board. Your report on page 20 begins as follows:

"This complaint arose from advice given to the complainant in 1966 by the director of the pension funds branch (now the employee benefits branch, Ministry of Government Services) in respect of consequences which would flow from a transfer of his pension credits with the public service superannuation fund (PSSF) to the Ontario municipal employees retirement system (OMERS) upon the acceptance by the complainant of a promotion within the public service."

Factually, this individual was in a particular position where he was making pension contributions to PSSF. He was given an opportunity for a promotion, the effect of which would require him to transfer his pension and thereafter to make contribution to OMERS. Before he made the decision to accept the promotion, he sought certain information and advice from the director of the pension funds branch as to the consequences.

Third paragraph: "The Ombudsman, as a result of his investigation, concluded that the director of the pension funds branch failed to supply complete information to the complainant, through his employer, with respect to the consequences of the complainant transferring his pension credits; that the communications passing between the director and the complainant's employer clearly included the assumption by the director of some responsibility to advise the complainant on the merits of transferring his pension from PSSF to OMERS; and that the advice given was incomplete as it failed to alert the complainant that, upon transfer of pension benefits, he would lose the employer's contributions made to PSSF and that he would lose entitlement to a pension calculated on his average highest three years of earnings. (The OMERS pension was then based on career average earnings.)"

That summarizes the Ombudsman's conclusions.

"The Ombudsman accordingly recommended that the complainant be paid reasonable compensation for his loss by either the Ministry of Government Services or the Public Service Superannuation Board."

Implicit in the Ombudsman's conclusion and recommendation is an assumption that had the individual been aware of the consequences of the transfer, he would not have accepted the promotion.

At the bottom of page 20, this is what you say about all that after you considered it:

"The committee agrees with the conclusions of the Ombudsman that the director, having assumed the responsibility for advising the complainant on the transfer of his pension credits, failed to inform him of all of the adverse consequences. However, on the facts disclosed by the Ombudsman's investigation and during the committee hearings, there does not appear to be any evidence that the consequences, if disclosed by the director, would have affected the complainant's decision to accept the position of promotion."

In other words, the committee did not hear any evidence that, had he known of this, he would not have accepted the position. Quite frankly, I think the consensus of the committee members was that he probably would have accepted the promotion in any event, although that is not explicitly stated.

We go on: "More importantly, no one from the Office of the Ombudsman or, remarkably, from the Public Service Superannuation Board, was able to advise the committee what the comparative pension benefits would be today under both pension plans based on relevant salaries of his 'old' and 'new' position."

In other words, the Ombudsman was unable to determine that the complainant had, in fact, suffered any loss as a result of the director's omission. Granted the Ombudsman attempted to quantify his recommendation by the amount of the employer's contribution which had accumulated from 1958 to 1966 and by applying some appropriate interest to date. That, however, begs the question that the pension benefits available today to the complainant are less than what he would now be entitled to under his former pension plan, even allowing for the loss of employer's contributions. That was not established.

"Accordingly, the committee is unable to support the recommendation of the Ombudsman. To do so would be to support the payment of moneys to compensate for a loss which had not been established."

In other words, you and your predecessors concluded that before promotion, the man was contributing to a pension plan at a particular rate that had certain terms: he would be entitled to an average of the highest three years' earnings and there would be certain employer contributions. There was no calculation of what his pension would be had he not transferred to the other plan and had he not obtained the promotion.

Mr. Ferraro: Why not?

Mr. Bell: It was explained to us that it was a very difficult thing to do. A lot of assumptions had to be made, such as whether he would have stayed in the same position, whether he would have been promoted and what the salary increases would have been. That notwithstanding, those calculations are possible when assumptions are made. That was one. There had not been a calculation of what the pension benefits would have been under the old plan, nor, remarkably, was there a calculation of what his current pension benefits would be under the new plan with the promotion and the accelerated salary. Frankly, even though the man may have lost something in the transfer, if the net effect of the promotion to the new plan is a higher pension rate at the end, he has not lost anything. As a matter of fact, the argument is that he has advanced. He may have taken a couple of steps back in the early years, but he has more than regained those steps.

The committee has not passed and is not passing any judgement upon those. The committee said, "We do not have those figures, and we are not convinced a loss has been demonstrated." The committee did not agree with the way the Ombudsman attempted to calculate the loss. That is what you said.

In February, Mr. Hayes raised this matter with the committee for the purpose of clarifying some remarks the committee addressed in the report. He asked the committee what it intended by certain remarks. Regrettably, and I will assume most of the responsibility, I was thinking of another case. We were dealing with another public service case and I gave Mr. Hayes and other persons the wrong direction. I will presume to speak for you.

The memorandum from Eleanor Meslin says it all. In her memorandum of March 27, she tells us that since the committee's report was published, Mr. O, the complainant, has made repeated efforts to have the matter reopened so that the Ombudsman could determine his loss. Mrs. Meslin says, "We are therefore unable to determine from the transcript whether the committee wishes us to proceed to try to determine Mr. O's loss."

"We would like further direction from the committee. We would also like to suggest that perhaps the loss could more readily be determined by the superannuation board, which has experts available...."

10:30 a.m.

I can assist and I invite Mr. Philip and Mr. Sheppard, who is not here, to give their comments, but there was no expectation on the part of the committee that the Ombudsman, the superannuation board or anyone else would make an attempt to quantify the loss. The real issue you are putting to the committee now may be, if a loss can be identified, what will the committee's position be? If this is so, one, the committee has never addressed that issue and two, if I were asked for advice on the issue, I would say the committee would have to consider it if such evidence were presented to the committee in some formal way.

Mrs. Meslin, if the Ombudsman is seeking direction, I do not think he is going to get it. I do not think we want or should direct you to decide whether you want to "reopen" the case. This is not a court of law. You do not have to prove your case the one time that you are given the opportunity. I am sure every day, or very frequently, a case that has been closed is subsequently reopened upon the provision of new information. This is entirely analogous because, who is going to undertake to determine?

I do not think the committee should give direction to the Public Service Superannuation Board, for example, that it do calculations. On the other hand, if the Ombudsman decides to pursue the matter further in an attempt to quantify or to see whether a loss can be quantified, the committee would be interested to hear if the superannuation board or the commission refused to co-operate and assist the Ombudsman, particularly with figures, printouts or whatever might be available, given certain assumptions.

Mrs. Meslin, the advice of the committee would be that if the Ombudsman decides he wants to reopen, he has to assume the onus of trying to make that determination with whatever assistance he can obtain from any appropriate source. That is my two cents' worth. Committee members may have different views.

Mr. Philip: I do not have different views. Counsel is correct. Part of the problem was that the onus was on the Ombudsman to prove his case or have reasonable suggestion that some wrongdoing or injustice took place. Also, the Ombudsman simply did not have the resources or the expertise available to find out whether there was a loss. Therefore, the fact that the Ombudsman could claim there was a loss but the proof did not seem overwhelmingly convincing, made it very difficult for the committee to find against the government. At the same time, the decision was not against the applicant. I hope I am not confusing it. We are not saying the Ombudsman was wrong; just that there was not adequate proof for us to make a decision.

If the Ombudsman is saying, "I am still in this position, and the superannuation board has the technical expertise and wishes to pursue it," it seems reasonable this committee would express grave concern if the superannuation board did not make the best attempt possible to make such calculations. We would view with some degree of concern, and be fairly tough in our questioning of the superannuation board, if it in any way did not make a reasonable effort to present those figures, and I am not suggesting that it would not.

Once we have those figures and if, in the Ombudsman's opinion, there is a case based on those figures, the case can be reopened and negotiated with the superannuation board. Failing any kind of agreement, it could always come to us.

There are two stages: First, we have to have some clear indication from Mrs. Meslin that she wishes to reopen the case to the extent of asking the superannuation board to provide meaningful figures and comparisons and leave it at that stage. We assume the Ombudsman will report back to us if the superannuation board, for any reason, is not co-operative. If it is co-operative and figures come out which are not favourable to her case, we assume the case will be closed and she will simply report back to us that the case is closed.

Mr. Bell: The case is closed now. If we do not hear anything again, we shall assume it continues to be closed. If we hear something else, we shall know that you opened it and are doing things.

Mrs. Meslin: Can I give you a point of clarification in relation to something Mr. Philip just raised about whether the board would do it, if we requested it. From our original report, there is a quote from the chairman that says, "Owing to the uncertainty as to what [the complainant's] career progression might have been had he not accepted the promotion, it is not possible to speculate as to the dollar amount of pension benefits which he would have been entitled to in comparison to his entitlement under the OMER system." We did make that request and they said we cannot do it.

Mr. Bell: I do not accept that. If you decided to reopen the case, you could retain a pension consultant for a relatively modest fee, not to do the calculations but to give you the reasonable and acceptable assumptions to make given that circumstance. For example, in doing a calculation on the old pension, would it be reasonable to assume salary increases identical to what he actually received?

You want to hear from him whether that is a reasonably accepted assumption. If you reopen the case and come back to the committee, you do not want to come back with a bunch of assumptions that cannot hold water. You were to retain your expert to get your assumptions nailed down. Then I would take those assumptions which spill off numbers, go to the commission and say: "There it is. You plug it in and you tell us."

I heard that too. What she said to the chairman was, "Who is going to make the assumptions about what he did in a nonexistent career?" With respect, it is done all the time, as long as your assumptions are acceptable.

Mr. Hayes: I understand that the committee felt Mr. O was given some bad advice or lack of proper advice dealing with the pension plan and the transfer. That is the impression I have, that the committee really felt this way. However, the committee could not decide what the losses really were.

If we, as a committee, feel this person was not treated in a fair and proper manner, then we should take a look at this case. If it is a case of us agreeing that there was an error there, we should try to pursue it to get an indication of how much the person lost, in order for the committee to make the final decision.

Mr. Philip: I agree with you, except the problem is that we cannot deal with it now because we cannot quantify it. There has to be some way of quantifying it or finding out whether there was X dollars lost. The calculations may come out on the opposite side, in which case there is no case.

10:40 a.m.

Mr. Hayes: Mrs. Meslin is looking for a direction from this committee. Is the committee willing to say to the Ombudsman's office, "Take another look at this issue"? Maybe there is some evidence out there that should be sought. The Ombudsman's office should pursue this case.

Mr. Bell: Mr. Hayes, I am a little concerned for purposes of precedent that the committee not tell the Ombudsman to reinvestigate this case. The committee has done that before and would do it again, given the right circumstances, which I would view to be extraordinary--for example, where the Ombudsman just did not do his job in an investigation and could not support something.

I invite Mrs. Meslin to respond to this, but it would be enough of a direction to the Ombudsman to say that if a loss is identifiable, this committee would certainly receive that evidence in a formal way and give it very serious consideration.

Frankly, the committee did not address that issue when it made its decision and would be hard-pressed not to give it serious consideration later on. That would be my advice. That is not an explicit direction to reopen, but it is a pretty good hint.

Mr. Hayes: You are saying that if the Ombudsman's office chooses to reopen this case or take another look at it and come back with the proper facts, then the committee can deal with it?

Mr. Bell: The committee would consider it.

Mr. Hayes: I will accept that.

Mr. Bell: Mr. Chairman, I do not think the committee needs a motion for that. It is just an expression of a view.

Mr. Chairman: Are there any further comments?

Mr. Bell: Before we turn to the last item on the agenda, the finalization of the 13th report, i.e., freedom of information, Mr. Decker has raised a practical matter with me. Since the 13th report has not yet been finalized, it seems more practical to add Mr. F and Mr. R to the 13th report, rather than to create a second report. It is all going to go out at the same time. Why create two documents instead of one?

Mrs. Meslin: Are you sure? On behalf of the Ombudsman, I would like to urge this committee to get it out, because it has been nine months.

Mr. Bell: We finish the 13th report today.

Mrs. Meslin: Will it be finished today and out, with the new stuff and the freedom of information material added?

Mr. Bell: I see what you are saying. You do not want the 13th report to be held up for Mr. R and Mr. F. It is not a delay--yes, it is. Forget it, members, we are going to do the 13th report. We have to arrange for them to see and finalize the typed version of the Mr. R and Mr. F cases. I withdraw that.

Mr. Philip: Just a minute. There is the very practical problem that we can have a report ready, but getting it debated in the House is another

issue. If you tack on the two reports we have just dealt with to the major report, then we have a very strong argument in terms of the individual cases to get our full report on very early for debate. One of the individuals is retiring, and the report has to be through before his retirement date.

On those grounds, we should use the leverage of the two reports we have just dealt with to get an early debate of our major report, which is also very important because it has the whole civil liberties thing attached to it.

Mrs. Meslin: Is that the human rights issue?

Mr. Philip: It has the human rights section in it.

Mr. Bell: The practical problem is to get this group together one more time after today to approve the language that is going to be prepared on its behalf for Mr. R and Mr. F. There are two ways it can be done. The subcommittee can be delegated the responsibility of approving the wording or the committee can trust me and give me carte blanche right now and approve any wording I may prepare. Either way is satisfactory to me.

Mr. Shymko: Is this the finalization?

Mr. Bell: This is for R and F, the two we have done.

Mr. Shymko: Normally in the past, the counsel prepared the final draft and we went over it. I found that process to be meaningful. I recall there have been a number of changes, not substantial, minor in nature, but still important. I would not want the report to be presented without our having a final crack at it.

Mr. Philip: Or worse still, somebody getting up and saying, "I did not agree to that."

Mr. Shymko: That is it. I would not want Mr. Philip to be upset by some wording at the end of your submission.

Mr. Philip: I would not want counsel to take public criticism from Mr. Shymko because he misinterpreted some of Mr. Shymko's immortal words.

Mr. Bell: I have a thick skin.

Mr. Shymko: I suggest either a subcommittee or everybody, but there should be a final look at it.

Mr. Bell: You do not resolve your problem with a subcommittee.

Mr. Philip: Why do we not split it off? Can we not meet next Friday and go over it?

Mr. Shymko: For half a day. I think it is incumbent on this committee to see the final draft and approve it. Timetable problems are always there, but it is part of our responsibility and mandate and we just have to get together.

Mr. Bell: All you will need is an hour.

Mr. Philip: When will it be ready?

Mr. Bell: It can be ready on Monday. It is half dictated now.

Mr. Philip: Can we not aim at Thursday or Friday for the committee?

Clerk of the Committee: The committee has no authority to meet.

Mr. Bell: How about a nonmeeting? Can we have a nonmeeting to look at a document and let it go?

Mr. Shymko: Are there moneys budgeted for a luncheon meeting of this committee?

Mr. Bell: I will pay for that.

Mr. Shymko: Maybe there could be something along that line.

Mr. Bell: I will pay for that. That is a counsel's lunch.

Mr. Shymko: How about doing it at counsel's lunch?

Mr. Bell: Can you organize it in the next two weeks? Can we organize that before the House gets back?

Mr. Cordiano: Why do we not just get it done?

Mr. Philip: Because it is not ready.

Mr. Cordiano: You want to look at the final draft.

Mr. Shymko: Absolutely. Counsel will draft it and we had better see the draft before it goes out, for the sake of counsel, if of nobody else.

Mr. Cordiano: When is the first opportunity to meet?

Mr. Shymko: As soon as he picks a date that would be appropriate to all of us within the next few weeks for a luncheon meeting, and we accept the generous offer of counsel.

Mr. Bell: There is another alternative and that is to swear Hansard to secrecy and have--

Mr. Shymko: It is part of our fiscal responsibility.

Mr. Chairman: Will that be satisfactory to the committee? Will you restate it?

Mr. Bell: We would have to use Hansard and take a chance somebody was going to listen in, but it is not earth-shattering anyway. I will dictate the report through Hansard and we will get it typed as quickly as possible. How quickly can it be typed?

Mrs. Grahame: About the same day.

Mr. Shymko: Why do we not say the same day?

Mr. Bell: How does that solve our problem?

Mr. Philip: We still have to meet.

Mr. Chairman: Is it possible to have it typed by two o'clock.

10:50 a.m.

Mr. Philip: If we have it all, then all the chairman has to do is say: "We have a major important report. We have two minor reports that can be debated at the same time because there is not going to be very much debate on them. They are simply special reports and they have a time frame. To save the Legislature some time, we are prepared to have one schedule for the three reports." That will solve your problem.

Mr. Bell: Can we do this? Why do I not finish the dictation of the reports today, have them typed and into clerk's hands no later than Monday, tomorrow preferably, and have the clerk distribute them to each of the members? Can we pick an hour? Is there an hour common to us all next week when we can get together and settle on the final version and then it goes? Is that possible?

Mr. Baetz: Not early in the week. Monday and Tuesday are out.

Mr. Shymko: Except Friday.

Mr. Bell: Not Monday and Tuesday.

Mr. McLean: Wednesday or Thursday.

Mr. Bell: This is not a meeting. This is just: "How are you? Nice to see you."

Mr. Bossy: If the report is printed immediately or as quickly as you can and sent to every member, you could set either the middle or the end of next week as the date the report could be deemed to be accepted if no objections have been made. You would not need a meeting if no one objects.

Mr. Bell: I have tried it before and the problem with that is that if four members, for example, give me suggested changes, all substantial, I have to send them to everybody else for comment. The need for and the purpose of the sit-down meeting is to make sure everybody knows about and agrees to any suggested changes. If one person comes forward with some amendments, that process will not work. It works if nobody says anything. That is presuming perfection on the part of counsel, the biggest mistake anybody could ever make.

Mr. McLean: You cannot approve a report unless you have a meeting to approve it. If somebody has an amendment or wants to change it, you have to have motions to do that. You cannot do it by having an hour's meeting. It has to be a regular meeting to do it properly.

Mr. Shymko: It may well be possible that the draft report prepared by counsel will be perfect and there will be no comments or amendments from any member of the committee. Then there would be no need for us to meet. Why do we not have the counsel prepare the report and mail it to us? If there are any amendments, one or two, we will call a meeting.

Mr. Ferraro: Or we can set a tentative date.

Mr. Shymko: Or set a tentative date and we will meet then.

Mr. Bell: Do you not want to set a date now?

Mr. Shymko: Sure, we will set a date now.

Mr. Bell: While we are all here.

Mr. Shymko: Exactly.

Mr. Ferraro: Set a tentative date. If we need it, call it. If we do not, do not.

Mr. Shymko: It should be between noon and two o'clock, following the generous offer of counsel.

Mr. Bell: You are going to meet off campus.

Mr. Philip: I thought, Mr. Shymko, that is because you do not get up before 11 o'clock.

Mr. Shymko: I was very busy this morning.

Mr. Cordiano: I want to make a brief comment. Some of our members (inaudible). We should set a tentative date to give them an opportunity to make those dates.

Mr. Philip: We are not talking about major revisions. The report has been written by members of the committee. There are not going to be major changes to it. We have already agreed to the major portions of the report. We have agreed to the conclusions on Mr. R and Mr. F. They are not contentious. We had unanimous agreement. I cannot believe that counsel, from the years of experience he has had, cannot interpret something as clear as our decision on Mr. R and Mr. F. There was no dissension. There were completely unanimous decisions on both reports.

Mr. Shymko: You will recall we have had unanimous decisions on reports in the past. When the wording was there, we had some changes.

Mr. Bell: Mr. Shymko is right. How is next Thursday in the noonish area?

Mr. Shymko: I will cancel all my appointments for the noonish area.

Mr. Philip: I do not have my calendar, but Friday would be better for me.

Mr. Bell: Friday?

Mr. McLean: Thursday is fine with me.

Mr. Baetz: It is fine with me. Not Friday.

Mr. Bell: Not Friday. Some not Friday, some not Thursday.

Mr. McLean: Will that be a regularly constituted meeting, Mr. Chairman?

Mr. Chairman: No.

Mr. McLean: I do not know how you can do business in such a manner. We know what the report is going to be. I am not one for agreeing to a report unless I have seen it finalized.

Mr. Bell: Mr. McLean is right.

Mr. McLean: Until that report is finalized and I have the document in my hand at a regularly constituted meeting, I will not be part of it.

Mr. Bell: Let us do this. I will get the draft report on Mr. R and Mr. F to the clerk tomorrow or Monday at the latest. He will distribute it to each of the members and then canvass the members for available dates. We will have to seek permission of the House leaders to meet for an hour.

Mr. Philip: Agreed.

Mr. Bell: By the way, can we all agree that we have imposed a time limit to do this before April 22?

Mr. Philip: Agreed.

Mr. Bell: This does not include the 13th report. The 13th report has already been agreed to with one exception, and we are going to finalize that exception in a few minutes. That report will be distributed on Monday for signature. If we can get a noontime meeting, it will still be a counsel's lunch, although it is a meeting. That is like permanent temporary, permanent with a capital P.

Mr. Philip: Permanent casual.

Mr. Bell: Permanent casual.

Mr. Shymko: As long as it is not an intermittent lunch.

Mrs. Meslin: Can I assume my services are no longer needed? You are doing this other thing. Do you need me here for the next phase?

Mr. Philip: There may be discussions on the Ombudsman's functions, so why not stay for five minutes?

Mr. Shymko: We feel insecure in your absence.

Mrs. Meslin: Are you not nice? Thank you.

11 a.m.

Mr. Shymko: Can I make an announcement to the members of the committee about the special report that has been tabled. Two weeks ago the federal government established the first standing committee on human rights. The committee held its first meeting two weeks ago yesterday. The chairman is Jim McGrath, MP, and the vice-chairman is none other than Sheila Copps.

The mandate for the framework now is being debated. The pressure from the Department of External Affairs is that the committee not deal with international violations of human rights, which External Affairs feels is its area of concern, but exclusively with domestic human rights. This is objected

to by the commissioner of the Canadian Human Rights Commission. He feels this is an intrusion into his area; he reports on domestic human rights violations. It may well be that this committee will deal with a combination of domestic human rights and international human rights violations. I want the members to be aware that we will not be the sole jurisdiction; the feds have finally established one.

In the debate in the House, there may be objections to our report on establishing one for Ontario because there is one now in Ottawa. It may be something we would like to debate. I still maintain that the more focus there is on international human rights violations in all jurisdictions, the better it is for the individuals concerned. I still maintain we should proceed with our report, notwithstanding what is happening in Ottawa.

Mr. Philip: Do you want to deal with the special report?

Mr. Bell: The last item is part of the 13th report dealing with the Freedom of Information and Protection of Privacy Act. I have little, if anything, to contribute on this. It has been undertaken substantially by the subcommittee and Merike Madisso. With that, I think Mr. Philip should address you.

Mr. Philip: The committee gave the subcommittee the power to make a presentation to the standing committee on procedural affairs and agencies, boards and commissions regarding our concerns with the processes involved in the freedom of information and privacy legislation that is before that committee.

In a letter to me, the chairman suggested we would be encouraged to appear in May. It is important that our views be recorded in our report, so it is reasonable to record our views in this report stating that it was our intention to make the presentation to the procedural affairs committee. Essentially what you have in front of you is the text of the report the subcommittee unanimously agreed should be presented, based on the views expressed in this committee. Let me summarize them briefly.

1. The function of freedom of information and privacy is essentially an Ombudsman's function, since it is the protection of human rights vis-à-vis government bureaucracy. Indeed, in a number of jurisdictions the Ombudsman of that country or jurisdiction has jurisdiction over privacy and freedom of information.

2. Under the present act as it is tabled, the Ombudsman has the jurisdiction to review refusals of disclosure, and as with all refusals, the decision-denied cases are referred to the standing committee on the Ombudsman.

3. The Ombudsman's committee is the committee that has the most expertise and experience in the functions of ombudsmen and is the committee that was set up to report to the Legislature on those matters concerning human rights and the Ombudsman's functions. Therefore, it is our submission that the processes coming out of this act should be under the jurisdiction of or report to this committee.

That essentially is my summary of those two rather legalistic-looking pages of paper, our summary of what you agreed to. Certainly this is the unanimous report of the subcommittee to you.

Mr. Chairman: Mr. Philip moves, seconded by Mr. Shymko, approval of the subcommittee report for inclusion in the report.

Mr. Bell: What are you going to do?

Mr. Chairman: We are going to include it in our report.

Mr. Bell: Are we just to annex that as a schedule, or do you want it to be part of the text?

Mr. Philip: Put it in the text.

Mr. Bell: We should just say, "The following is the report of the subcommittee respecting freedom of information." Is that right?

Mr. Philip: Add to that, "as approved unanimously by the committee."

There are a couple of minor word changes we have to work on in the last paragraph, but it is not going to be changed.

Mr. Ferraro: May I say that I take issue with the word "unanimously"? Quite frankly, I did not vote on that. There was something in it that I did not understand, so I would ask Hansard to record it was not unanimous.

Mr. Philip: When I go before the standing committee on procedural affairs, I will say the report is not unanimous because one of the Liberal members could not understand it.

Mr. Chairman: Is there any further business to come before the committee?

Mr. Bell: We should be giving some thought to your schedule for the rest of the year, in view of the arrangements for the visitations in September to the communities in northwestern Ontario.

As you know, the Ombudsman normally tables his report about the first of July. You meet either in very late August or at the beginning of September to consider that report. That has been thrown off somewhat this year. We should at least consider whether it is feasible to meet before you travel.

I would suggest the answer to that question is no, but at least the question should be considered. Failing that, it would be advisable and helpful if we could fix a period right now, so when preparations are under way in the summer we can give a fixed period to all those who have to appear before you, especially all the governmental-organization people. There will then be less chance for them to wriggle off the dates.

You know what I am saying. It is much easier to pin people down if you have a date than if you do not have a date. Do we yet have approval of a period of time in September to meet? No.

11:10 a.m.

Mr. Shymko: There are a number of members of this committee--Mr. Morin and myself--who are members of the International Association of French-Speaking Parliamentarians. On September 5, there is a ceremony of the

official installation of Ontario into the international body. I would suggest that there be no meeting, if possible, on September 5.

Interjection: It is a Friday.

Mr. Shymko: It is a Friday, okay. There is also an entire week of what is the parallel of the Commonwealth Parliamentary Association in Quebec City and a number of us will be absent. I would appreciate it, at least, not to meet on September 5, and if possible not to meet in that week and the following week.

Mr. McLean: I think the committee had tentatively planned to travel that week.

Mr. Chairman: Yes.

Mr. Shymko: The week of September 1?

Mr. Chairman: September 1.

Mr. Shymko: For the entire week.

Mr. Chairman: I am told it is six to nine days.

Mr. Shymko: These were tentative plans, I understand. You may take into consideration the conflict of two members of the committee, at least, who would want to travel with the committee.

Mr. Philip: Will you note that and perhaps the subcommittee can meet later in the year to work out an agenda. I do not think it is fair if Yuri and Gilles are away at another conference, which they obviously have to attend.

Mr. Bossy: Yes.

Mr. Philip: We do not have that many French-speaking parliamentarians in the Legislature and I think we should try to accommodate them.

Mr. Chairman: Do we not have a third person on this committee?

Mrs. Meslin: Yes.

Mr. Shymko: Mr. Bossy, pardon me, is the third person.

Mr. Philip: That gives even more reason to try to change it.

Mr. Shymko: I just noted that you are--

Mr. Philip: The other reason for changing it is that the MPP, Gilles Pouliot, whose riding we will be in, will be involved in that very conference--it is a thought that occurred to me right now--so there is no way in which we as a committee should be going into somebody's riding if he is not there to host us.

Mr. Shymko: That is a very good point.

Mr. Philip: I think we simply have to change that date.

Interjections.

Mr. Bell: Your submissions to this committee in May are going to be based on the substance of this report.

Mr. Chairman: Is there any more business to come before the committee?

Mrs. Meslin: Do I take it that you have not given any consideration to when this committee is going to discuss its recommendation-denied cases? Obviously, you have that week in September; then you are going up north. It would really be helpful if we had some idea of what you are considering. The end of September? The end of August?

Mr. Philip: Why not the last two weeks in August as a time when we can deal with recommendation-denied cases?

Interjection.

Mrs. Meslin: We need two weeks.

Mr. Bossy: If we schedule for September, will the Legislature not resume in the middle of September, so that we are restricted--

Will it be October?

Mr. Bell: May I give a piece of advice? In practical terms, the last two weeks in August are lost mainly because of holiday problems and conflicts. Half the people who would appear before you will not be available. We have tried it in other years and August has been a flop, quite frankly. I would urge you, if you are looking to schedule the recommendation-denied cases--we do not even know how many there are--to do it after your trip. The first week in September is lost.

Mrs. Meslin: The second week in September will be the trip. Is that right?

Mr. Bell: The second week in September will be the trip. I urge that we schedule for the third week of September.

Interjection.

Mr. Philip: Any two weeks.

Mr. Bell: All right, the second and the--

Mr. Chairman: How long is your conference?

Mr. Bell: --the third and the fourth week in September as the tentative public hearing dates. This means you are going to be working with Ombudsman's matters for three weeks in September.

Mr. Philip: The clerk of the committee should try to get some feeling on when the House will be recalled.

Mr. Shymko: Would it be possible to schedule them again at a time when some of us will be back from the conference?

Mr. Chairman: How long is your conference?

Mr. McLean: Mr. Chairman, when we meet to finalize the reports in a week or less, why do these people who have the concern not bring them to that committee with the dates with which they are having a problem, so we can determine at that time what dates we will try to meet?

Mr. Shymko: In order not to conflict with the French-speaking parliamentarians conference, I suggest we schedule the meetings of the committee for the weeks of September 14, 21 and 28 or, if possible, the weeks of September 21, 28 and the first week of October.

Mrs. Meslin: We do not need three weeks.

Mr. Shymko: It is only three weeks.

Mrs. Meslin: I do not think you need three weeks.

Mr. Shymko: We may not need three weeks.

Mrs. Meslin: I am very hopeful that--

Mr. Shymko: We do not have any meetings before September 21. The week of September 21 would be ideal.

Mr. McLean: That is the week of the ploughing match.

Mr. Chairman: The ploughing match is on September 16. Mr. McLean's suggestion is a good one; we can discuss it at our next meeting.

The committee adjourned at 11:18 a.m.

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